



COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 50

RIN 3038-AF18

Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps to Account for the Transition from LIBOR and Other IBORs to Alternative Reference Rates

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing to amend its interest rate swap clearing requirement regulations adopted under applicable provisions of the Commodity Exchange Act (CEA) in light of the global transition from reliance on certain interbank offered rates (IBORs) (*e.g.*, the London Interbank Offered Rate (LIBOR)) that have been, or will be, discontinued as benchmark reference rates to alternative reference rates, which are predominantly overnight, nearly risk-free reference rates (RFRs). The proposed amendments would revise the set of interest rate swaps that are required to be submitted for clearing pursuant to the CEA and the Commission's regulations to a derivatives clearing organization (DCO) that is registered under the CEA (registered DCO) or a DCO that has been exempted from registration under the CEA (exempt DCO). Among other things, the proposed amendments would modify the Commission's interest rate swap clearing requirement to reflect the market shift away from swaps that reference IBORs to swaps that reference RFRs.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 3038–AF18, by any of the following methods:

- *CFTC Comments Portal:* <https://comments.cftc.gov>. Select the “Submit Comments” link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://comments.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission’s regulations, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://comments.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

FOR FURTHER INFORMATION CONTACT: Sarah E. Josephson, Deputy Director, at 202-418-5684 or sjosephson@cftc.gov; Melissa D’Arcy, Special Counsel, at 202-418-5086 or mdarcy@cftc.gov; or Daniel O’Connell, Special Counsel, at 202-418-5583 or doconnell@cftc.gov; each in the Division of Clearing and Risk at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

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I. BACKGROUND

A. Commission’s Swap Clearing Requirement

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) established a comprehensive new regulatory framework for swaps.¹ Title VII of the Dodd-Frank Act (Title VII) amended the CEA to require, among other things, that a swap be cleared through a registered DCO or an exempt DCO if the Commission has determined that the swap, or group, category, type, or class of swaps, is required to be cleared, unless an exception to the clearing requirement applies.² The CEA, as amended by Title VII, provides that the Commission may issue a clearing requirement determination based either on a Commission-initiated review of a swap,³ or a swap submission from a DCO.⁴

Section 2(h)(2)(D)(ii) of the CEA requires the Commission to consider the following five factors when making a clearing requirement determination: (I) the existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data; (II) the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is traded; (III) the effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the DCOs available to clear the contract; (IV) the effect on competition, including appropriate fees and charges applied to

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

² Section 2(h)(1)(A) of the CEA, 7 U.S.C. 2(h)(1)(A).

³ Section 2(h)(2)(A) of the CEA, 7 U.S.C. 2(h)(2)(A). Section 2(h)(2)(A) provides for a Commission-initiated review process whereby the Commission, on an ongoing basis, must review swaps, or a group, category, type, or class of swaps, to determine whether a swap, or a group, category, type, or class of swaps, should be required to be cleared.

⁴ Section 2(h)(2)(B) of the CEA, 7 U.S.C. 2(h)(2)(B). Section 2(h)(2)(B)(i) requires that each DCO submit to the Commission each swap, or group, category, type, or class of swaps, that it plans to accept for clearing. The swaps subject to this proposed determination were submitted by DCOs pursuant to CEA section 2(h)(2)(B)(i) and regulation 39.5(b), 17 CFR 39.5(b). Pursuant to section 2(h)(2)(B)-(C) of the CEA, the Commission must review swap submissions from DCOs to determine whether the swaps should be subject to required clearing. Regulation § 39.5(b) implements the procedural elements of section 2(h)(2)(B)-(C) by establishing the process by which a DCO must submit the swaps it offers for clearing to the Commission for purposes of considering a clearing requirement determination.

clearing; and (V) the existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.⁵

The Commission adopted its first clearing requirement determination (First Determination) in 2012.⁶ The First Determination was implemented between March 2013 and October 2013 based on the schedule described in regulation § 50.25 and the preamble to the First Determination.⁷ The First Determination applied to interest rate swaps in four classes: fixed-to-floating swaps, basis swaps, forward rate agreements (FRAs), and overnight index swaps (OIS).⁸

In making its initial interest rate swap clearing determination, the Commission focused on the size of the interest rate swap market relative to the swap market overall, as well as the fact that these swaps were already widely being cleared.⁹ As set forth in regulation § 50.4(a), the Commission identified four classes of interest rate swaps having certain specifications related to (i) the currency in which the notional and payment amounts are specified; (ii) the floating rate index referenced in the swap; (iii) the stated

⁵ 7 U.S.C. 2(h)(2)(D)(ii).

⁶ Clearing Requirement Determination Under Section 2(h) of the CEA, 77 FR 74284 (Dec. 13, 2012) (First Determination).

⁷ 17 CFR 50.25; First Determination, 77 FR at 74319 – 74321.

⁸ *See generally* First Determination. By way of background, an interest rate swap is generally an agreement by counterparties to exchange payments based on a series of cash flows over a specified period of time, typically calculated using two different rates. Fixed-to-floating swaps are interest rate swaps in which the payment(s) owed on one leg of the swap is calculated using a fixed rate, and the payment(s) owed on the other leg is calculated using a floating rate. Basis swaps are interest rate swaps for which the payments for both legs are calculated using floating rates. FRAs are interest rate swaps in which payments are exchanged on a predetermined date for a single period and one leg of the swap is calculated using a fixed rate while the other leg is calculated using a floating rate set on a predetermined date. OIS are interest rate swaps for which one leg of the swap is calculated using a fixed rate and the other leg is calculated using a floating rate based on a daily overnight rate.

⁹ *Id.* at 74287, 74307. To this day, significant amounts of notional in interest rate swaps are traded in markets around the world, and these swaps comprise an outsized portion of notional among all swaps. According to the Bank for International Settlements (BIS), as of June 2021, there was an estimated \$488 trillion in outstanding notional of interest rate swaps, which represents approximately 80% of the total outstanding notional of all over-the-counter (OTC) derivatives. *See* BIS, OTC Derivatives Outstanding, Table D7 (OTC, Interest Rate Derivatives, H1 2021), updated Nov. 15, 2021, available at <https://stats.bis.org/statx/srs/table/d7?f=pdf>; BIS, Global OTC Derivatives Markets, June 2021, available at https://www.bis.org/publ/otc_hy2111/intgraphs/graphA1.htm.

termination date; (iv) optionality; (v) dual currencies; and (vi) conditional notional amounts.¹⁰ The Commission limited the interest rate swaps required to be cleared to those denominated in four currencies (U.S. dollar (USD), Euro (EUR), British pound (GBP), and Japanese yen (JPY)). The Commission noted that interest rate swaps denominated in these currencies comprised an outsized portion of the interest rate swap market in terms of notional amounts outstanding and trading volumes compared to interest rate swaps denominated in other currencies.¹¹

The First Determination covered a number of interest rate swaps that reference IBORs, including fixed-to-floating swaps, basis swaps, and FRAs denominated in USD, GBP, and JPY, referencing USD, GBP, and JPY LIBOR, respectively, and OIS denominated in EUR referencing the Euro Overnight Index Average (EONIA). The Commission observed that interest rate swaps referencing those indexes had significant outstanding notional amounts and trading liquidity.¹²

The Commission adopted its second clearing requirement determination (Second Determination) in 2016.¹³ The Second Determination was implemented between December 2016 and October 2018,¹⁴ and covered interest rate swaps in nine additional currencies: Australian dollar (AUD), Canadian dollar (CAD), Hong Kong dollar (HKD), Mexican peso (MXN), Norwegian krone (NOK), Polish zloty (PLN), Singapore dollar (SGD), Swedish krona (SEK), and Swiss franc (CHF). The Commission adopted the Second Determination largely in order to further harmonize its interest rate swap clearing requirement with those of other jurisdictions that had already issued, or were in the

¹⁰ 17 CFR 50.4(a).

¹¹ First Determination, 77 FR at 74308.

¹² *Id.* at 74309.

¹³ Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps, 81 FR 71202 (Oct. 14, 2016) (Second Determination).

¹⁴ 17 CFR 50.26; Second Determination, 81 FR at 71202.

process of issuing, clearing mandates on similar interest rate swaps.¹⁵ The Second Determination also covered swaps that reference other IBORs, including fixed-to-floating swaps denominated in SGD referencing the Singapore Swap Offer Rate (SOR-VWAP) and fixed-to-floating swaps denominated in CHF referencing CHF LIBOR.¹⁶ These rates will be discussed further below.

B. End of LIBOR

LIBOR is an interest rate benchmark that was intended to measure the average rate at which a bank can obtain unsecured funding in the London interbank market for a given tenor and currency. It had been one of the world's most frequently referenced interest rate benchmarks, serving as a reference rate for a wide variety of swaps and other financial products. Over the years, LIBOR was calculated based on submissions from a panel of contributor banks and published every London business day. Immediately prior to January 1, 2022, LIBOR was published for five currencies (USD, GBP, EUR, CHF, and JPY) and seven tenors (overnight or spot next depending on currency, 1-week, 1-month, 2-month, 3-month, 6-month, and 12-month), resulting in 35 individual LIBOR rates.¹⁷ Beginning this year, these LIBOR rates have almost entirely ceased publication or become nonrepresentative of the underlying market they are intended to measure.

Nearly a decade ago, government investigations concerning LIBOR, as well as a decline in the volume of interbank lending transactions that LIBOR is intended to measure, gave rise to concerns regarding the integrity and reliability of LIBOR and other

¹⁵ Second Determination, 81 FR at 71203 – 71205. The Commission explained that such harmonization serves an important anti-evasion goal: if a non-U.S. jurisdiction issued a clearing requirement, and a swap dealer (SD) located in the United States were not subject to an analogous a clearing requirement under U.S. law, then market participants potentially could avoid the non-U.S. jurisdiction's clearing requirement by entering into a swap with an SD located in the United States. *Id.* at 71203.

¹⁶ *Id.* at 71205.

¹⁷ See generally ICE Benchmark Administration (IBA), LIBOR, available at <https://www.theice.com/iba/libor>.

IBORs.¹⁸ Although LIBOR was subject to a number of significant reform efforts,¹⁹ regulators and global standard-setting bodies did not view these reforms as a long-term solution. On July 27, 2017, Andrew Bailey, then-Chief Executive of the United Kingdom (UK) Financial Conduct Authority (FCA), LIBOR's primary regulator, announced that the FCA would not use its authority to compel LIBOR panel banks to contribute to the benchmark after 2021.²⁰ On March 5, 2021, the FCA announced that publication of LIBOR would cease on December 31, 2021, for the following:²¹

- (i) EUR LIBOR in all tenors;
- (ii) CHF LIBOR in all tenors;
- (iii) JPY LIBOR in the spot next, 1-week, 2-month, and 12-month tenors;
- (iv) GBP LIBOR in the overnight, 1-week, 2-month, and 12-month tenors; and
- (v) USD LIBOR in the 1-week and 2-month tenors.²²

The FCA further determined that GBP and JPY LIBOR in 1-month, 3-month, and 6-month tenors would become nonrepresentative after December 31, 2021.²³

¹⁸ See, e.g., International Organization of Securities Commissions (IOSCO), Principles for Financial Benchmarks, July 2013, at 1, available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf>. See also David Bowman, et al., "How Correlated Is LIBOR With Bank Funding Costs?," FEDS Notes, June 29, 2020, available at <https://www.federalreserve.gov/econres/notes/feds-notes/how-correlated-is-libor-with-bank-funding-costs-20200629.htm>; and Alternative Reference Rates Committee, *Second Report*, Mar. 2018, at 1-3, available at <https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2018/ARRC-Second-report>.

¹⁹ See generally IBA, *Methodology*, available at https://www.theice.com/publicdocs/ICE_LIBOR_Methodology.pdf; H.M. Treasury, *The Wheatley Review of LIBOR: Final Report*, Sept. 2012, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/191762/wheatley_review_libor_finalreport_280912.pdf; Intercontinental Exchange (ICE), *ICE LIBOR Evolution*, Apr. 25, 2018, at 4, available at https://www.theice.com/publicdocs/ICE_LIBOR_Evolution_Report_25_April_2018.pdf.

²⁰ Andrew Bailey, "The future of Libor," July 27, 2017, available at <https://www.fca.org.uk/news/speeches/the-future-of-libor>.

²¹ FCA, *FCA Announcement on Future Cessation and Loss of Representativeness of the LIBOR Benchmarks*, Mar. 5, 2021 (FCA Announcement on LIBOR Cessation), available at <https://www.fca.org.uk/publication/documents/future-cessation-loss-representativeness-libor-benchmarks.pdf>.

²² See section IV below (discussing the continued publication of USD LIBOR for certain tenors through June 30, 2023).

²³ FCA Announcement on LIBOR Cessation. The FCA stated that once a LIBOR rate becomes nonrepresentative, its representativeness will not be restored.

Additionally, the FCA determined that USD LIBOR in the overnight and 12-month tenors would cease after June 30, 2023, and that USD LIBOR in the 1-month, 3-month, and 6-month tenors would not be representative after that date.²⁴ At this time, EUR, CHF, JPY, and GBP LIBOR in all tenors, and USD LIBOR in the 1-week and 2-month tenors, have ceased publication or become nonrepresentative of the underlying market they are intended to measure.

The historic circumstances surrounding the transition from IBORs to RFRs are the result of significant private and public sector coordinated efforts.²⁵ As plans to retire LIBOR proceeded, regulators in the United States and other jurisdictions worked to identify, develop, and implement reference rates to serve as alternatives to LIBOR and other IBORs.²⁶ In the United States, the Alternative Reference Rates Committee (ARRC), convened in 2014 by the Federal Reserve Board (FRB) and the Federal Reserve Bank of New York (FRBNY) and comprised of private market participants and *ex officio* banking and financial sector regulators, selected the Secured Overnight Financing Rate (SOFR)²⁷ as its preferred alternative to USD LIBOR.²⁸ The ARRC developed a Paced

²⁴ *Id.*

²⁵ While not all benchmark rates considered to be alternative reference rates for IBORs may be RFRs, efforts to transition markets away from IBORs have focused on RFRs as alternatives. For purposes of brevity, the Commission uses the term “RFR” in this notice of proposed rulemaking to refer to alternative reference rates.

²⁶ For additional background information, see Swap Clearing Requirement To Account for the Transition from LIBOR and Other IBORs to Alternative Reference Rates, 86 FR 66476, 66480 (Nov. 23, 2021) (RFI).

²⁷ USD SOFR is an RFR that measures the cost of overnight repurchase agreement transactions collateralized by U.S. Treasury securities. FRBNY, Statement Introducing the Treasury Repo Reference Rates, Apr. 3, 2018, available at https://www.newyorkfed.org/markets/operating_policy/operating_policy_180403. See also FRBNY, Secured Overnight Financing Rate Data, available at <https://apps.newyorkfed.org/markets/autorates/SOFR#:~:text=The%20SOFR%20is%20calculated%20as,L,LC%2C%20an%20affiliate%20of%20the>; and FRBNY, Additional Information about the Treasury Repo Reference Rates, available at <https://www.newyorkfed.org/markets/treasury-repo-reference-rates-information>. USD SOFR has been published each New York business day at 8 a.m. ET since April 3, 2018, by the FRBNY in cooperation with the U.S. Office of Financial Research.

²⁸ ARRC, “The ARRC Selects a Broad Repo Rate as its Preferred Alternative Reference Rate,” June 22, 2017, available at <https://www.newyorkfed.org/medialibrary/microsites/arrc/files/2017/ARRC-press-release-Jun-22-2017.pdf>.

Transition Plan, which has now been completed, to facilitate an orderly transition from USD LIBOR to USD SOFR.²⁹

C. Global Progress on Benchmark Reform

Regulators and public-private working groups in other IBOR currency jurisdictions have been working to identify, develop, and encourage market uptake of RFRs to replace LIBOR in currencies other than USD, as well as IBORs other than LIBOR. As relevant to this proposal, RFRs identified as alternatives for IBORs in currencies other than USD include: (i) the Sterling Overnight Index Average (SONIA) for GBP; (ii) the Swiss Average Rate Overnight (SARON) for CHF; (iii) the Tokyo Overnight Average (TONA) for JPY; and (iv) the Euro Short-Term Rate (€STR) for EUR.

²⁹ ARRC, Paced Transition Plan, available at <https://www.newyorkfed.org/arrc/sofr-transition#pacedtransition>. The Paced Transition Plan called for (i) the establishment of infrastructure for futures and/or OIS trading in USD SOFR by the second half of 2018; (ii) the start of trading in futures and/or bilateral, uncleared OIS that reference USD SOFR by the end of 2018; (iii) the start of trading in cleared OIS that reference USD SOFR in the effective Federal funds rate (EFFR) price alignment interest (PAI) and discounting environment by the end of the first quarter of 2019; (iv) Chicago Mercantile Exchange, Inc. (CME)'s and LCH Limited (LCH)'s conversion of discounting, and PAI and price alignment amount, from EFFR to USD SOFR with respect to all outstanding cleared USD-denominated swaps by October 16, 2020; and (v) the ARRC's endorsement of a term reference rate based on USD SOFR derivatives markets by the end of the first half of 2021. The final step was completed on July 29, 2021, when the ARRC formally endorsed forward-looking term USD SOFR rates developed by CME.

In the European Union (EU), the Working Group on Euro Risk-Free Rates, convened in 2018 by the European Central Bank in connection with the Belgian Financial Services, the European Securities and Markets Authority (ESMA), and the European Commission (EC), also identified €STR as its preferred alternative to EUR EONIA, which ceased publication on January 3, 2022.³⁰ Additionally, with regard to SGD, the Steering Committee for SOR & SIBOR Transition to SORA, established by the Monetary Authority of Singapore (MAS), has been working to oversee a transition from SGD SOR-VWAP to the Singapore Overnight Rate Average (SORA).³¹ SGD SOR-VWAP relies on USD LIBOR as an input and is expected to be discontinued across all tenors after June 30, 2023.³²

Table 1 that follows this paragraph contains a non-exhaustive list of RFRs that have been identified to replace IBORs around the world.³³

³⁰ ESMA, Working Group on Euro Risk-Free Rates, available at <https://www.esma.europa.eu/policy-activities/benchmarks/working-group-euro-risk-free-rates>; European Money Markets Institute, EONIA, available at <https://www.emmi-benchmarks.eu/benchmarks/eonia/>.

³¹ Association of Banks in Singapore, About SC-STs, available at <https://www.abs.org.sg/benchmark-rates/about-sc-sts>.

³² Steering Committee for SOR & SIBOR Transition to SORA, Timelines to Cease Issuance of SOR and SIBOR-Linked Financial Products, Mar. 31, 2021 (Timelines to Cease SOR), at 4, available at <https://www.abs.org.sg/docs/library/timelines-to-cease-issuance-of-sor-derivatives-and-sibor-linked-financial-products.pdf>.

³³ See generally Financial Stability Board (FSB), Reforming Major Interest Rate Benchmarks, Nov. 20, 2020, at 29-43, 54-55, available at <https://www.fsb.org/2020/11/reforming-major-interest-rate-benchmarks-2020-progress-report/>. See also Andreas Schrimpf and Vladislav Sushko, “Beyond Libor: a primer on the new reference rates,” BIS Quarterly Review, Mar. 2019, at 35, available at https://www.bis.org/publ/qrtrpdf/r_qt1903e.pdf; Bank of England, Preparing for 2022: What You Need to Know about LIBOR Transition, Nov. 2018, at 10, <https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/what-you-need-to-know-about-libor-transition.pdf>; ISDA, et al., IBOR Global Benchmark Survey 2018 Transition Roadmap, Feb. 2018, at 32, <https://www.isda.org/a/g2hEE/IBOR-Global-Transition-Roadmap-2018.pdf>; European Central Bank, Euro Short-Term Rate (€STR), available at [https://www.ecb.europa.eu/stats/financial_markets_and_interest_rates/euro_short-term_rate/html/index.en.html#:~:text=The%20euro%20short%2Dterm%20rate,activity%20on%201%20October%202019](https://www.ecb.europa.eu/stats/financial_markets_and_interest_rates/euro_short-term_rate/html/index.en.html#:~:text=The%20euro%20short%2Dterm%20rate,activity%20on%201%20October%202019;); Timelines to Cease SOR.

TABLE 1—RFRS IDENTIFIED FOR IBORS

<u>Currency</u>	<u>Index</u>	<u>Identified Alternative Rate</u>	<u>Alternative Rate Administrator</u>	<u>Secured</u>	<u>Published</u>
AUD	Bank Bill Swap Rate (BBSW)	Reserve Bank of Australia Interbank Overnight Cash Rate (AONIA)	Reserve Bank of Australia	No	Yes
CAD	Canadian Dollar Offered Rate (CDOR)	Canadian Overnight Repo Rate Average (CORRA)	Bank of Canada	Yes	Yes
CHF	LIBOR	SARON	SIX Swiss Exchange	Yes	Yes
EUR	LIBOR	€STR	European Central Bank	No	Yes
	Euro Overnight Index Average (EONIA)	€STR	European Central Bank	No	Yes
	Euro Interbank Offered Rate (EURIBOR)	€STR	European Central Bank	No	Yes
GBP	LIBOR	SONIA	Bank of England	No	Yes
HKD	Hong Kong Interbank Offered Rate (HIBOR)	Hong Kong Dollar Overnight Index Average (HONIA)	Treasury Market Association	No	Yes
JPY	LIBOR	TONA	Bank of Japan	No	Yes
MXN	Term Interbank Equilibrium Interest Rate (TIIE)	Overnight TIIE	Banco de Mexico	Yes	Yes
SGD	SOR	SORA	Association of Banks in Singapore	No	Yes
	Singapore Interbank Offered Rate (SIBOR)	SORA	Association of Banks in Singapore	No	Yes

Regulators and global standard-setting bodies have urged market participants to accelerate their adoption of USD SOFR and other RFRs and cease entering new swaps referencing LIBOR and other IBORs,³⁴ and have issued guidance and regulatory relief to facilitate the transition. In the United States, on July 13, 2021, the Commission’s Market Risk Advisory Committee adopted SOFR First, a phased initiative to switch interdealer trading conventions from reliance on USD LIBOR to USD SOFR as a reference rate for swaps.³⁵ SOFR First was implemented in four phases between July 26, 2021, and December 16, 2021.³⁶ SOFR First mirrors similar best practices adopted in other jurisdictions to increase activity in swaps referencing RFRs.³⁷

II. OVERVIEW OF THE REQUEST FOR INFORMATION

In light of ongoing efforts by the international regulatory community, market participants, and others to transition financial markets from IBORs to RFRs, on November 23, 2021, the Commission published an RFI seeking public input regarding how it should amend the interest rate swap clearing requirement to address the cessation of IBORs that have been used as benchmark reference rates and the market adoption of swaps that reference RFRs.³⁸ The RFI sought input on all aspects of the swap clearing requirement that may be affected by the transition from IBORs to RFRs, including

³⁴ See, e.g., FRB, Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC), Statement on LIBOR Transition, Nov. 30, 2020, available at <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20201130a1.pdf>; and IOSCO, Statement on Benchmarks Transition, June 2, 2021, available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD676.pdf>.

³⁵ CFTC, “CFTC Market Risk Advisory Committee Adopts SOFR First Recommendation at Public Meeting,” July 13, 2021, available at <https://www.cftc.gov/PressRoom/PressReleases/8409-21>.

³⁶ CFTC, CFTC’s Interest Rate Benchmark Reform Subcommittee Issues User Guide for the Transition of Exchange-Traded Derivatives Activity to SOFR, Dec. 16, 2021, available at <https://www.cftc.gov/PressRoom/PressReleases/8469-21>.

³⁷ See, e.g., Bank of England, “The FCA and the Bank of England encourage market participants in further switch to SONIA in interest rate swap markets,” Sept. 28, 2020, available at <https://www.bankofengland.co.uk/news/2020/september/fca-and-boe-joint-statement-on-sonia-interest-rate-swap>; Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks, “Transition of Quoting Conventions in the JPY interest rate swaps market (‘TONA First’),” July 26, 2021, available at https://www.boj.or.jp/en/paym/market/jpy_cmt/data/cmt210726b.pdf.

³⁸ RFI, 86 FR at 66486 – 66488.

enumerated requests for data and other information related to IBOR and RFR swaps. The Commission received 14 responses to the RFI from a variety of market infrastructure providers, market participants, and industry organizations.³⁹ In addition to addressing the Commission's specific requests for information, many respondents to the RFI shared information regarding their own contributions to the transition from IBORs to RFRs.

A. Work by DCOs to Support the Transition to RFRs

The Commission received responses to its RFI from CMEG,⁴⁰ LSEG,⁴¹ and Eurex, all of which operate or are registered DCOs that offer for clearing RFR swaps subject to this proposal. The Commission also received a response from JSCC, an exempt DCO that clears JPY TONA swaps.⁴² Additionally, the Commission received a response from the CCP12, a global association of central counterparties (CCPs).

DCOs played an important role in the transition from IBORs to RFRs by offering clearing services for RFR swaps and converting cleared IBOR swaps to RFR OIS.⁴³ The DCOs' responses highlight the efforts they undertook to facilitate a smooth transition from cleared IBOR swaps to cleared RFR swaps.⁴⁴ As the CCP12 noted in its response,

³⁹ Responses were submitted by: American Council of Life Insurers (ACLI), CCP12, London Stock Exchange Group (LSEG), Japan Securities Clearing Corporation (JSCC), Tradeweb Markets LLC (Tradeweb), Investment Company Institute (ICI), Managed Funds Association (MFA), Toronto-Dominion Bank (TD Bank), Eurex Clearing AG (Eurex), the International Swaps and Derivatives Association (ISDA), Alternative Investment Management Association (AIMA), Citadel, Bloomberg L.P., and CME Group Inc. (CMEG). The response letters are available on the CFTC Comments Portal: <https://comments.cftc.gov/PublicComments/ReleasesWithComments.aspx>.

⁴⁰ CMEG is the parent company of CME. CMEG Letter.

⁴¹ LSEG has majority ownership of LCH Group, which operates LCH. LSEG Letter.

⁴² OTC Clearing Hong Kong Limited (HKEX), another exempt DCO, also clears certain of the RFR swaps subject to this proposal. Specifically, HKEX offers swaps referencing USD SOFR and EUR €STR for clearing. See Hong Kong Exchanges and Clearing, Interest Rate Swaps, available at https://www.hkex.com.hk/Products/OTC-Derivatives/Interest-Rate-Swaps?sc_lang=en.

⁴³ As the Commission explained in the RFI, these conversion events were intended to address market participant concerns related to potential bifurcation of liquidity between trading in legacy IBOR swaps that had fallen back to RFRs (*i.e.*, as a result of the operation of DCO rules implementing ISDA's fallbacks) and new RFR OIS, as well as certain operational costs. RFI, 86 FR at 66484.

⁴⁴ CMEG, LSEG, Eurex, and JSCC Letters.

DCOs currently provide clearing services for RFR OIS and manage the risks associated with clearing such swaps.⁴⁵

Table 2 that follows this paragraph shows swaps referencing RFRs that registered DCOs have offered for clearing to facilitate the transition from IBORs.⁴⁶ After DCOs began clearing RFR swaps, they worked to move open interest in IBOR swaps to RFR swaps, reflecting the growing RFR swap market. CME, LCH, and Eurex each converted cleared EUR EONIA swaps outstanding after October 15, 2021, to €STR OIS, ahead of

⁴⁵ CCP12 Letter.

⁴⁶ Table 2 does not include information from exempt DCOs. Exempt DCOs, such as JSCC and HKEX, also offer clearing services for certain RFR swaps, but do not offer customer clearing to U.S. customers.

EUR EONIA's January 3, 2022 cessation.⁴⁷ These DCOs also converted cleared swaps referencing CHF, EUR, JPY, and GBP LIBOR to corresponding RFR OIS in December 2021, ahead of the December 31, 2021 cessation date for these LIBOR rates.⁴⁸

Additionally, in December 2021, JSCC completed a conversion of JPY LIBOR swaps to JPY TONA OIS.⁴⁹ Following these conversion events, with limited exceptions, swaps referencing these LIBOR rates were no longer offered for clearing.⁵⁰ The Commission anticipates that CME, LCH, and Eurex will launch similar conversion events for all swaps still referencing USD LIBOR prior to June 30, 2023.⁵¹

⁴⁷ See CME, CME Submission No. 21-413, CFTC Regulation 40.6(a) Certification, Notification Regarding Modification of Cleared Euro Overnight Index Average (“EONIA”) Overnight Index Swaps to Reference Euro Short Term Rate (“€STR”) Ahead of Scheduled Discontinuation of EONIA, Sept. 29, 2021, available at <https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2021/9/21-413.pdf>; LCH, LCH Limited Self-Certification: Benchmark Reform – Rates Conversion, Sept. 29, 2021 (LCH Self-Certification: Benchmark Reform – Rates Conversion), available at https://www.lch.com/system/files/media_root/FINAL%20-%20LCH%20self%20cert_Benchmark%20Reform%202021%2009%2029%20v3%20%28Clean%29.pdf; Eurex Clearing, ECAG Rule Certification 081-21, Sept. 16, 2021 (Eurex Rule Certification 081-21), available at https://www.eurex.com/resource/blob/2781070/61d1fccdd00bc1a06753877a5fa3f483/data/ecag_cftc_filing_for_circular_081-21.pdf; and Eurex, Eurex Clearing Circular 111/20 EurexOTC Clear: Summary of Consultation on the Transition Plan for Transactions Referencing the EONIA Benchmark, Dec. 14, 2020, available at <https://www.eurex.com/ec-en/find/circulars/clearing-circular-2373634>.

⁴⁸ LCH Self-Certification: Benchmark Reform – Rates Conversion; LCH, Supplementary Statement on LCH's Solution for Outstanding Cleared LIBOR Contracts, LCH Circular No. 4146, Mar. 18, 2021, available at <https://www.lch.com/membership/ltd-membership/ltd-member-updates/supplementary-statement-lchs-solution-outstanding>; CME, CME IBOR Conversion Plan for Cleared Swaps, June 9, 2021, available at <https://www.cmegroup.com/trading/interest-rates/files/cleared-swaps-considerations-for-ibor-fallbacks-and-conversion-plan.pdf>; and Eurex Rule Certification 081-21. The Commission notes that only LCH conducted a conversion event for EUR LIBOR swaps because CME and Eurex did not offer these swaps for clearing at that time.

⁴⁹ JSCC Letter.

⁵⁰ CMEG, Advisory Notice #21-434, Modification of Cleared Over-the-Counter (OTC) British Pound (GBP), Japanese Yen (JPY) and Swiss Franc (CHF) Denominated Interest Rate Swap Products Referencing the London Interbank Offered Rate (LIBOR) and Limitation of Acceptance for Clearing, Nov. 22, 2021, available at <https://www.cmegroup.com/notices/clearing/2021/11/Chadv21-434.pdf> (noting that CME provides limited clearing services for certain LIBOR swaps resulting from the exercise of bilateral uncleared swaptions, which are subject to a same-day conversion event on the day such swaps are accepted for clearing); LCH, LIBOR Transition – Risk Notice, Nov. 2021, available at https://www.lch.com/system/files/media_root/LIBOR%20Transition%20-%20Risk%20Notice%20Nov%202021.pdf (setting forth the terms of time-limited clearing services for certain “legacy” LIBOR transactions, including LIBOR swaps resulting from the exercise of certain swaptions; and Eurex, EurexOTC Clear Product List, available at https://www.eurex.com/resource/blob/227404/760dd5a98729621e2de7720d28bc291a/data/ec15075e_Atta ch.pdf).

⁵¹ Each registered DCO has made public its plans for full USD LIBOR transition. CMEG, LSEG, and Eurex Letters

TABLE 2—SUMMARY OF SWAPS OFFERED FOR CLEARING TO SUPPORT IBOR TRANSITION

<u>Swap Class</u>	<u>Currency</u>	<u>Floating Rate Index</u>	<u>Registered DCOs Offering Clearing</u> <u>(Termination Date Range Offered)</u>
Basis Swaps	AUD	BBSW-AONIA	LCH (up to 31 yrs)
	CAD	CDOR-CORRA	LCH (up to 31 yrs)
	EUR	EURIBOR- €STR	CME (up to 51 yrs), Eurex (up to 51 yrs), LCH (up to 51 yrs)
	GBP	LIBOR-SONIA	Eurex (up to 51 yrs), LCH (up to 51 yrs)
	JPY	LIBOR-TONA	Eurex (up to 31 yrs), LCH (up to 41 yrs)
	SGD	SOR-SORA	LCH (up to 21 yrs)
	USD	LIBOR-SOFR	CME (up to 51 yrs), Eurex (up to 51 yrs), LCH (up to 51 yrs)
		Fed Funds- SOFR	CME (up to 51 yrs), Eurex (up to 51 yrs), LCH (up to 51 yrs)
OIS	AUD	AONIA	CME (up to 31 yrs), LCH (up to 31 yrs)
	CAD	CORRA	CME (up to 31 yrs), LCH (up to 31 yrs)
	CHF	SARON	CME (up to 31 yrs), Eurex (up to 31 yrs), LCH (up to 31 yrs)
	EUR	€STR	CME (up to 51 yrs), Eurex (up to 51 yrs), LCH (up to 51 yrs)
	GBP	SONIA	CME (up to 51 yrs), Eurex (up to 51 yrs), LCH (up to 51 yrs)
	JPY	TONA	CME (up to 31 yrs), Eurex (up to 31 yrs), LCH (up to 41 yrs)
	SGD	SORA	CME (up to 21 years), LCH (up to 21 yrs)
	USD	SOFR	CME (up to 51 yrs), Eurex (up to 51 yrs), LCH (up to 51 yrs)

B. Work by Market Participants to Support the Transition to RFRs

Market participants also played a significant role in the transition from reliance on IBORs to the adoption of RFRs through engagement with RFR working groups, such as the ARRC, and the provision of trading liquidity in interest rate swaps referencing RFRs.⁵² As Citadel and ISDA noted in their responses to the RFI, many RFR swaps are now voluntarily cleared by market participants in large proportions.⁵³ Citadel explained that, in the interdealer market, the “vast majority” of trading activity has transitioned to USD SOFR, and that “streaming dealer prices can be observed across [swap execution facilities (SEFs)], evidencing the number of available market makers.”⁵⁴

For each of the amendments in this proposal, the Commission considered feedback and data from responses to the RFI. Respondents overwhelmingly supported updating the clearing requirement to account for the cessation of LIBOR and other IBORs. Many respondents specifically expressed a desire that the Commission harmonize any changes to the clearing requirement with changes taking place in other jurisdictions.⁵⁵ In particular, the Commission recognizes the information provided by

⁵² For example, ISDA, as an organization of OTC derivatives market participants, played a key role in the development of contractual fallbacks for IBORs, ensuring that swaps documented under ISDA agreements that reference certain key IBORs can transition to adjusted versions of corresponding RFRs when those IBORs cease or become non-representative. ISDA, “Amendments to the 2006 ISDA Definitions to include new IBOR fallbacks,” Oct. 23, 2020, available at <http://assets.isda.org/media/3062e7b4/23aa1658.pdf>; ISDA, “Amendments to the 2006 ISDA Definitions to include new IBOR fallbacks,” Oct. 23, 2020, available at <http://assets.isda.org/media/3062e7b4/23aa1658.pdf>; ISDA, ISDA 2020 IBOR Fallbacks Protocol, Oct. 23, 2020, available at <http://assets.isda.org/media/3062e7b4/08268161-pdf/>; ISDA 2021 Fallbacks Protocol, December 2021 Benchmark Module, Dec. 16, 2021, available at https://www.isda.org/a/UhtgE/ISDA-2021-Fallbacks-Protocol_December-2021-Benchmark-Module_Publication-Version.pdf. See also RFI, 86 FR at 66483-84 (discussing ISDA’s IBOR fallbacks protocol and supplement).

⁵³ Citadel and ISDA Letters.

⁵⁴ Citadel Letter. Citadel also noted that, for USD SOFR swaps, “robust liquidity exists across a wide range of maturities, from 7 days to 50 years.” *Id.*

⁵⁵ ACLI, CCP12, Eurex, ISDA, LSEG, MFA, and TD Bank Letters.

respondents with regard to issuing a clearing requirement determination for OIS referencing USD SOFR with a termination date range as long as 50 years.⁵⁶

III. DOMESTIC AND INTERNATIONAL COORDINATION AND OUTREACH

The global shift from IBORs to RFRs represents a historic effort by international standard setting bodies such as IOSCO and the FSB, regulators, cross-jurisdictional working groups, market infrastructure providers, market participants, and others, to move global swap markets toward reliance on more sustainable benchmarks.⁵⁷ Due to the cross-border nature of this effort and the size of the affected markets, the Commission believes it is a priority to engage with domestic and international regulators as it considers changes to the clearing requirement. As discussed further below, the Commission's proposed clearing requirement determination is based upon this type of ongoing consultation and coordination among regulatory authorities and with market participants.

A. Domestic Coordination Efforts

The Commission is committed to working with the FRB, FRBNY, Securities and Exchange Commission (SEC), and other domestic authorities to ensure transparency in its efforts and, to the greatest extent possible, consistency in the transition from IBORs to RFRs. To this end, the Commission consults with domestic authorities including the SEC, the FRB, and the FRBNY as part of this rulemaking process.

⁵⁶ *E.g.*, AIMA Letter (“Market participants have taken multiple steps in preparation for the cessation of IBORs and LIBOR, and there has been a corresponding material transition to the use of SOFR and other RFRs for OTC contracts. As a result, liquidity in swaps referencing SOFR has grown, and will continue to grow, sufficient to justify the Commission making a clearing requirement determination for these contracts. Accordingly, we encourage the Commission to update the clearing requirement to include swaps referencing SOFR with maturities ranging from 7 days to 50 years.”); MFA Letter (“MFA strongly recommends that the Commission modify its Swap Clearing Requirement under Commission regulation 50.4 by adding a clearing obligation to the OIS class for SOFR swaps with a maturity range of 7 days to 50 years as soon as practicable.”).

⁵⁷ *See* RFI, 86 FR at 66478 – 66482.

B. International Coordination Efforts

Section 752(a) of the Dodd-Frank Act directs the Commission to consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards for the regulations of swaps.⁵⁸ The Commission accomplished this with respect to the Second Determination by considering the ways in which it could harmonize its clearing requirement with clearing requirements in other jurisdictions.⁵⁹ The Commission has long recognized the interconnectedness of the interest rate swap market, and the importance of consulting and coordinating with its counterparts in other jurisdictions in the adoption of clearing requirements in order to promote regulatory consistency and certainty, and to prevent the evasion of clearing requirements.⁶⁰

As part of this rulemaking process, the Commission is working with its counterparts overseas to ensure a coordinated approach to required clearing of interest rate swaps during the move from use of swaps referencing IBORs to swaps referencing RFRs. In particular, as part of the ongoing regulatory dialogue among authorities, Commission staff consulted with counterparts, including those at Bank of England, FCA, ESMA, Japanese Financial Services Agency (JFSA), Hong Kong Monetary Authority (HKMA), Australian Securities and Investments Commission (ASIC), and MAS. This type of dialogue reflects an effort to ensure consistency in interest rate swap clearing requirements across jurisdictions.

C. Clearing Requirements in Other Jurisdictions

In developing this proposal, the Commission considered relevant changes to clearing requirements in other jurisdictions, with a view toward ensuring that any

⁵⁸ Section 752 is not codified in the CEA.

⁵⁹ Second Determination, 81 FR at 71203.

⁶⁰ *E.g.*, Second Determination, 81 FR at 71223 (noting that “the interest rate swaps market is global and market participants are interconnected”); First Determination, 77 FR at 74287 (“The Commission is mindful of the benefits of harmonizing its regulatory framework with that of its counterparts in foreign countries. The Commission has therefore monitored global advisory, legislative, and regulatory proposals, and has consulted with foreign regulators in developing the final regulations.”).

changes the Commission proposes are harmonized to the greatest extent possible with those adopted by its international counterparts. This goal is consistent with the Commission’s approach in the Second Determination and the views of a significant number of respondents to the RFI.

Table 3 that follows this paragraph outlines the way in which regulators in other jurisdictions have revised, or proposed to revise, clearing requirements to account for the transition from IBORs to RFRs.⁶¹

TABLE 3—CLEARING REQUIREMENTS IN OTHER JURISDICTIONS

	<u>Australia</u> (Proposed)	<u>EU</u> (Final Regulatory Technical Standards – EC to approve)	<u>Japan</u> (Final)	<u>UK</u> (Final)
USD	To be determined (TBD).	SOFR – 7 days to 3 years	Not applicable (N/A).	TBD
GBP	SONIA – 7 days to 50 years	SONIA – 7 days to 50 years	N/A	SONIA – 7 days to 50 years
EUR	€STR – 7 days to 2 years	€STR – 7 days to 3 years	N/A	€STR – 7 days to 3 years
JPY	TONA – 7 days to 30 years	TBD	TONA – 7 days to 40 years ⁶²	TONA – 7 days to 30 years

⁶¹ ASIC, Consultation Paper 353, “Proposed amendments to the *ASIC Derivative Transaction Rules (Clearing) 2015*,” Dec. 2021, at 5, 14, available at <https://download.asic.gov.au/media/mjknuhl/cp-353-published-6-december-2021.pdf>; ESMA, Final Report, “On draft RTS on the clearing and derivative trading obligations in view of the benchmark transition to risk free rates,” Nov. 18, 2021, at 36-38, 63, available at https://www.esma.europa.eu/sites/default/files/library/esma70-156-4953_final_report_on_the_co_and_dto_re_benchmark_transition.pdf; Bank of England, “Derivatives clearing obligation – modifications to reflect interest rate benchmark reform: Amendments to BTS 2015/2205,” May 20, 2021, available at <https://www.bankofengland.co.uk/paper/2021/derivatives-clearing-obligation-modifications-to-reflect-interest-rate-benchmark-reform-amendments>; Bank of England, “Derivatives clearing obligation – modifications to reflect interest rate benchmark reform: Amendments to BTS 2015/2205,” Sept. 29, 2021, available at <https://www.bankofengland.co.uk/paper/2021/derivatives-clearing-obligation-modifications-to-reflect-interest-rate-benchmark-reform>; Bank of England, “Derivatives clearing obligation – introduction of contracts referencing TONA: Amendment to BTS 2015/2205,” Dec. 3, 2021, available at <https://www.bankofengland.co.uk/paper/2021/derivatives-clearing-obligation-introduction-of-contracts-referencing-tona-ps>; Bank of England, “Derivatives clearing obligation – introduction of contracts referencing TONA: Amendment to BTS 2015/2205,” Sept. 29, 2021, available at <https://www.bankofengland.co.uk/paper/2021/derivatives-clearing-obligation-introduction-of-contracts-referencing-tona>.

⁶² Although JFSA does not clearly prescribe a termination date range in its public notice regarding its JPY TONA clearing requirement, the requirement went into effect on December 6, 2021. JSCC rules provide for the clearing of JPY TONA OIS with a termination date range of 7 days to 40 years. JSCC, Interest Rate

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IV. PROPOSED AMENDMENTS TO REGULATION § 50.4(a)

As described above, the global swap marketplace has made tremendous progress toward completing the transition from reliance on swaps that reference LIBOR and other IBORs to clearing and trading swaps that reference RFRs. The Commission intends to facilitate this transition further by modifying its interest rate swap clearing requirement to reflect the cessation or loss of representativeness of certain IBORs, and the market adoption of RFRs. The Commission is grateful to market participants and others who took the time to respond to its RFI. As stated above, the Commission reviewed those responses carefully in formulating this proposal, and the Commission looks forward to further comment on this proposal.

A. Overview of the Proposed Regulation

The Commission is proposing to amend regulation § 50.4(a) to remove all LIBOR and EUR EONIA swap clearing requirements, and add requirements to clear corresponding RFR swaps. While the IBOR swaps for which clearing requirements would be removed span all four classes of swaps currently required to be cleared—fixed-to-floating swaps, basis swaps, FRAs, and (in the case of EUR EONIA) OIS—the RFR swaps that the Commission proposes to add to the clearing requirement are all OIS. OIS are swaps where one leg is calculated based on a fixed rate and the other is calculated based on a daily overnight floating rate (*i.e.*, the RFR). On the other hand, RFR-linked basis swaps are currently cleared, but the Commission is not proposing to add any new requirements to clear RFR-linked basis swaps at this time because they are used primarily to move out of IBOR swap positions and into RFR swap positions.⁶³ By not proposing to

Swap Clearing Products: List of Cleared Products, available at <https://www.jpx.co.jp/jscc/en/cash/irs/product.html>.

⁶³ RFR-linked basis swaps offered for clearing are generally RFR-IBOR basis swaps. See ACLI Letter (“We also do not believe that SOFR-LIBOR basis swaps should be added to the clearing requirement due

add these interest rate swaps to the clearing requirement, the Commission believes that it is providing added flexibility for market participants. Commission staff will continue to monitor the use of RFR-linked basis swaps as the IBOR transition process moves forward.

This proposal is the first rule change that the Commission is proposing to facilitate the transition from IBORs to RFRs for purposes of the clearing requirement. But in many ways, the proposal is an update rather than expansion of the existing clearing requirement. In effect, the Commission's proposal would replace the requirement to clear IBOR swaps in a number of different classes with a requirement to clear RFR OIS because the IBOR swaps have become unavailable and liquidity has shifted into RFR OIS.

As discussed further below, the Commission is proposing that these amendments to part 50 to require clearing for certain RFR OIS would become effective 30 days after publication of the final rule in the *Federal Register*. The Commission is proposing to remove existing IBOR swap clearing requirements from regulation § 50.4 in two stages. The Commission proposes to remove requirements to clear (i) non-USD LIBOR and EUR EONIA swaps, 30 days after the publication of the final rule in the *Federal Register*; and (ii) USD LIBOR and SGD SOR-VWAP swaps, effective July 1, 2023. There remains outstanding USD LIBOR swaps activity, and a number of respondents to the RFI requested that the Commission retain its USD LIBOR swap clearing requirement until such time as that rate is unavailable.⁶⁴

Specifically, the Commission is proposing to amend regulation § 50.4(a) as follows:

to low liquidity and limitations on electronic execution. We expect SOFR-LIBOR basis swaps to require bilateral OTC treatment for their limited and dwindling use cases.”); ISDA Letter (“Due to low liquidity, we think SOFR-LIBOR basis swaps should not be subject to mandatory clearing.”).

⁶⁴ See additional discussion of RFI responses below.

1. Effective 30 days after publication of the final rule in the *Federal Register*:

a. Remove swaps denominated in GBP, CHF, and JPY that reference LIBOR as a floating rate index from each of the fixed-to-floating swap, basis swap, and FRA classes, as applicable.

b. Remove swaps denominated in EUR that reference EONIA as a floating rate index from the OIS class.

c. Add to the OIS class:

i. Swaps denominated in USD that reference SOFR as a floating rate index with a stated termination date range of 7 days to 50 years,

ii. Swaps denominated in EUR that reference €STR as a floating rate index with a stated termination date range of 7 days to 3 years,

iii. Swaps denominated in CHF that reference SARON as a floating rate index with a stated termination date range of 7 days to 30 years,

iv. Swaps denominated in JPY that reference TONA as a floating rate index with a stated termination date range of 7 days to 30 years, and

v. Swaps denominated in SGD that reference SORA as a floating rate index with a stated termination date range of 7 days to 10 years.

d. Change the maximum stated termination date range for swaps denominated in GBP that reference SONIA as a floating rate index in the OIS class to 50 years, for a new stated termination date range of 7 days to 50 years.

2. Effective July 1, 2023:

a. Remove swaps denominated in USD that reference LIBOR as a floating rate index from each of the fixed-to-floating swap, basis swap, and FRA classes.

b. Remove swaps denominated in SGD that reference SOR-VWAP as a floating rate index from the fixed-to-floating swap class.

A comparative overview of the effect of these proposed amendments to regulation § 50.4(a) is presented following this paragraph in tabular form for illustrative purposes. Swap classes and specifications that would be removed if the Commission's proposal is finalized are stricken through. Swap classes and specifications that would be added if the Commission's proposal is finalized are bolded. The set of tables following this paragraph illustrates the effect of the amendments as of 30 days after publication of a final rule in the *Federal Register*.

Table 1 a Specification	Fixed-to-floating swap class					
1. Currency	Australian Dollar (AUD)	Canadian Dollar (CAD)	Euro (EUR)	Hong Kong Dollar (HKD)	Mexican Peso (MXN)	Norwegian Krone (NOK)
2. Floating Rate Indexes	BBSW	CDOR	EURIBOR	HIBOR	TIE-BANXICO	NIBOR
3. Stated Termination Date Range	28 days to 30 years	28 days to 30 years	28 days to 50 years	28 days to 10 years	28 days to 21 years	28 days to 10 years
4. Optionality	No	No	No	No	No	No
5. Dual Currencies	No	No	No	No	No	No
6. Conditional Notional Amounts	No	No	No	No	No	No

Table 1 b Specification	Fixed-to-floating swap class						
1. Currency	Polish Zloty (PLN)	Singapore Dollar (SGD)	Swedish Krona (SEK)	Swiss Franc (CHF)	Sterling (GBP)	U.S. Dollar (USD)	Yen (JPY)
2. Floating Rate Indexes	WIBOR	SOR-VWAP	STIBOR	LIBOR	LIBOR	LIBOR	LIBOR
3. Stated Termination Date Range	28 days to 10 years	28 days to 10 years	28 days to 15 years	28 days to 30 years	28 days to 50 years	28 days to 50 years	28 days to 30 years
4. Optionality	No	No	No	No	No	No	No
5. Dual Currencies	No	No	No	No	No	No	No
6. Conditional Notional Amounts	No	No	No	No	No	No	No

Table 2 Specification	Basis swap class				
1. Currency	Australian Dollar (AUD)	Euro (EUR)	Sterling (GBP)	U.S. Dollar (USD)	Yen (JPY)
2. Floating Rate Indexes	BBSW	EURIBOR	LIBOR	LIBOR	LIBOR
3. Stated Termination Date Range	28 days to 30 years	28 days to 50 years	28 days to 50 years	28 days to 50 years	28 days to 30 years
4. Optionality	No	No	No	No	No
5. Dual Currencies	No	No	No	No	No
6. Conditional Notional Amounts	No	No	No	No	No

Table 3 Specification	Forward rate agreement class						
1. Currency	Euro (EUR)	Polish Zloty (PLN)	Norwegian Krone (NOK)	Swedish Krona (SEK)	Sterling (GBP)	U.S. Dollar (USD)	Yen (JPY)
2. Floating Rate Indexes	EURIBOR	WIBOR	NIBOR	STIBOR	LIBOR	LIBOR	LIBOR
3. Stated Termination Date Range	3 days to 3 years	3 days to 2 years	3 days to 2 years	3 days to 3 years	3 days to 3 years	3 days to 3 years	3 days to 3 years
4. Optionality	No	No	No	No	No	No	No
5. Dual Currencies	No	No	No	No	No	No	No
6. Conditional Notional Amounts	No	No	No	No	No	No	No

Table 4 Specification	Overnight index swap class								
1. Currency	Australian Dollar (AUD)	Canadian Dollar (CAD)	Euro (EUR)	Singapore Dollar (SGD)	Sterling (GBP)	Swiss Franc (CHF)	U.S. Dollar (USD)	U.S. Dollar (USD)	Yen (JPY)
2. Floating Rate Indexes	AONIA-OIS	CORRA-OIS	€STR EONIA	SORA	SONIA	SARON	FedFunds	SOFR	TONA
3. Stated Termination Date Range	7 days to 2 years	7 days to 2 years	7 days to 3 years	7 days to 10 years	7 days to 50 years 3-years	7 days to 30 years	7 days to 3 years	7 days to 50 years	7 days to 30 years
4. Optionality	No	No	No	No	No	No	No	No	No
5. Dual Currencies	No	No	No	No	No	No	No	No	No
6. Conditional Notional Amounts	No	No	No	No	No	No	No	No	No

The set of tables following this paragraph illustrates the effect of further regulation § 50.4(a) amendments that, if finalized, would be effective as of July 1, 2023:

Table 1 a Specification	Fixed-to-floating swap class					
1. Currency	Australian Dollar (AUD)	Canadian Dollar (CAD)	Euro (EUR)	Hong Kong Dollar (HKD)	Mexican Peso (MXN)	Norwegian Krone (NOK)
2. Floating Rate Indexes	BBSW	CDOR	EURIBOR	HIBOR	TIE-BANXICO	NIBOR
3. Stated Termination Date Range	28 days to 30 years	28 days to 30 years	28 days to 50 years	28 days to 10 years	28 days to 21 years	28 days to 10 years
4. Optionality	No	No	No	No	No	No
5. Dual Currencies	No	No	No	No	No	No
6. Conditional Notional Amounts	No	No	No	No	No	No

Table 1 b Specification	Fixed-to-floating swap class			
1. Currency	Polish Zloty (PLN)	Singapore Dollar (SGD)	Swedish Krona (SEK)	U.S. Dollar (USD)
2. Floating Rate Indexes	WIBOR	SOR VWAP	STIBOR	LIBOR
3. Stated Termination Date Range	28 days to 10 years	28 days to 10 years	28 days to 15 years	28 days to 50 years
4. Optionality	No	No	No	No
5. Dual Currencies	No	No	No	No
6. Conditional Notional Amounts	No	No	No	No

Table 2 Specification	Basis swap class		
1. Currency	Australian Dollar (AUD)	Euro (EUR)	U.S. Dollar (USD)
2. Floating Rate Indexes	BBSW	EURIBOR	LIBOR
3. Stated Termination Date Range	28 days to 30 years	28 days to 50 years	28 days to 50 years
4. Optionality	No	No	No
5. Dual Currencies	No	No	No
6. Conditional Notional Amounts	No	No	No

Table 3 Specification	Forward rate agreement class				
1. Currency	Euro (EUR)	Polish Zloty (PLN)	Norwegian Krone (NOK)	Swedish Krona (SEK)	U.S. Dollar (USD)
2. Floating Rate Indexes	EURIBOR	WIBOR	NIBOR	STIBOR	LIBOR
3. Stated Termination Date Range	3 days to 3 years	3 days to 2 years	3 days to 2 years	3 days to 3 years	3 days to 3 years
4. Optionality	No	No	No	No	No
5. Dual Currencies	No	No	No	No	No
6. Conditional Notional Amounts	No	No	No	No	No

The Commission observes that it is the only authority to require CHF LIBOR swaps be submitted to clearing. In 2016, the CFTC was aware that the Swiss Financial Market Supervisory Authority (FINMA) was considering adopting a clearing requirement for swaps referencing CHF LIBOR, and sought public comment on the matter prior to adopting a final rule that included CHF LIBOR swaps.⁶⁵ After the CFTC's final rule went into effect, FINMA did not adopt a clearing requirement for CHF LIBOR, and no other jurisdictions adopted such a clearing requirement. At this time, FINMA has not yet implemented mandatory clearing for CHF SARON OIS.

Similarly, while MAS did not require clearing of SGD SOR-VWAP swaps with a termination date range of 28 days to 10 years, until October 2018, the Commission was aware of this expected action, and took it into account when adopting a clearing requirement for SGD SOR-VWAP swaps in 2016.⁶⁶ At this time, MAS has not yet implemented mandatory clearing for SGD SORA OIS.

The Commission observes that clearing rates for CHF SARON OIS and SGD SORA OIS are already high. As Table 6 below illustrates, the Commission estimates that more than 98% of notional transacted in these rates in each of November 2021, December 2021, and January 2022, was cleared.⁶⁷ Furthermore, the Commission estimates that, as of January 28, 2022, there was \$1,730 billion in outstanding notional in CHF SARON OIS, whereas there was \$686 billion in outstanding notional in CHF

⁶⁵ Clearing Requirement Determination Under Section 2(h) of the CEA for Interest Rate Swaps, 81 FR 39506, 39508 (June 16, 2016); Second Determination, 81 FR at 71205.

⁶⁶ Second Determination, 81 FR at 71205; MAS, MAS Requires OTC Derivatives to be Centrally Cleared to Mitigate Systemic Risk, May 2, 2018, available at <https://www.mas.gov.sg/news/media-releases/2018/mas-requires-otc-derivatives-to-be-centrally-cleared-to-mitigate-systemic-risk>; MAS, Response to Feedback Received: Draft Regulations for Mandatory Clearing of Derivatives Contracts, May 2, 2018, at 4, available at <https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/2018-May-02-Response-to-consultation-on-draft-regs-on-mandatory-clearing-of-derivatives/Response-to-Feedback-on-Draft-Regulations-for-Mandatory-Clearing-of-Derivatives-Contracts.pdf>.

⁶⁷ The data in Table 6 is based on the Commission's weekly swaps report data.

LIBOR fixed-to-floating swaps.⁶⁸ Similarly, the Commission estimates that, as of January 28, 2022, there was \$449 billion in outstanding notional in SGD SORA OIS, and \$307 billion in outstanding notional in SGD SOR-VWAP fixed-to-floating swaps.⁶⁹

Based on this data, it would appear that roughly half of the CHF market remains in LIBOR, and that, while SGD SOR-VWAP is expected to continue until June 30, 2023, the transition to SGD SORA is well underway. Data presented in tables 4 and 5 below further illustrate that the CHF LIBOR and SGD SOR-VWAP swap markets have rapidly diminished as markets shift to swaps referencing RFRs. The Commission estimates that, in January 2022, there were no CHF LIBOR fixed-to-floating swap transactions, and 69 SGD SOR-VWAP fixed-to-floating swap transactions (comprising \$5 billion notional). The Commission also estimates that, in January 2022, there were 2,283 CHF SARON OIS transactions (comprising \$130 billion notional) and 3,794 SGD SORA OIS transactions (comprising \$119 billion notional).

Request for Comment

The Commission requests comment on the proposed modifications to regulation § 50.4(a), including the adoption of clearing requirements for CHF SARON OIS and SGD SORA OIS.

B. Modifications to the Existing Clearing Requirements

1. Swaps No Longer Offered for Clearing

In addition to adding certain RFR OIS to the clearing requirement, this proposal would modify the existing clearing requirement to reflect the cessation or loss of representativeness of certain IBOR swaps. Currently, all LIBOR settings with the exception of overnight, 1-month, 3-month, 6-month, and 12-month USD LIBOR, and

⁶⁸ These outstanding notional figures are based on data for swaps that have been cleared at CME, LCH, or Eurex and reported to the CFTC under part 39 of the Commission's regulations. Commission staff compiled, processed, and reviewed the data presented in this proposal.

⁶⁹ *Id.*

EUR EONIA, have ceased or become nonrepresentative. As explained above, CME, LCH, and Eurex have converted cleared EUR EONIA and non-USD LIBOR swaps into RFR OIS, and with limited exceptions, swaps referencing GBP, CHF, and JPY LIBOR, as well as EUR EONIA, are no longer offered for clearing.⁷⁰ As discussed above, regulators in the United States and other jurisdictions have called on market participants to transfer their swap positions from IBORs to RFRs, with corresponding liquidity shifting, and continuing to shift, from swaps referencing these IBORs to swaps referencing RFRs. Therefore, the Commission has preliminarily determined to update the clearing requirement for interest rate swaps where such IBOR swaps are no longer offered for clearing and have been replaced by RFR OIS.

2. Swaps Affected by Future IBOR Unavailability

By contrast, remaining USD LIBOR settings, as well as SGD SOR-VWAP settings, are not expected to cease or become nonrepresentative until after June 30, 2023. For this reason, the Commission proposes not to remove the clearing requirement for swaps referencing USD LIBOR and SGD SOR-VWAP, which relies on USD LIBOR as an input, until July 1, 2023. Because interest rate swaps referencing USD LIBOR and SGD SOR-VWAP are offered for clearing currently, and there are still outstanding notional exposures and trading activity in these swaps, the Commission believes that these swaps should remain subject to the clearing requirement. The remaining USD LIBOR settings are expected to cease or become nonrepresentative after June 30, 2023, and the Commission anticipates that there will be no new interest rate swaps referencing USD LIBOR on or after July 1, 2023. The Commission will continue to monitor the use of interest rate swaps referencing USD LIBOR and SGD SOR-VWAP as the IBOR transition process moves forward.

⁷⁰ While clearing services generally are no longer available for EUR LIBOR swaps, swaps referencing EUR LIBOR are not subject to required clearing under regulation § 50.4(a).

In anticipation of this USD LIBOR end date, the Commission anticipates that DCOs will continue to conduct conversion events to replace all outstanding USD LIBOR swaps with USD SOFR OIS, and will cease offering clearing services for USD LIBOR swaps. Until that time, however, the Commission proposes to maintain the clearing requirement for USD LIBOR swaps, and SGD SOR-VWAP swaps, until those rates cease publication.

This decision would be consistent with the fact that Bank of England has not yet proposed a clearing requirement for USD SOFR swaps and has left its USD LIBOR swap clearing obligation in place.⁷¹ By contrast, ESMA adopted regulatory technical standards that, subject to European Commission approval, will remove ESMA’s current USD LIBOR clearing requirements and add a requirement to clear USD SOFR OIS (7 days to 3 years).⁷² While a number of respondents to the RFI expressed a desire for the Commission to harmonize its clearing requirement with clearing obligations in other jurisdictions, including the EU,⁷³ several respondents specifically called for the

⁷¹ Bank of England, “Derivatives clearing obligation – modifications to reflect interest rate benchmark reform: Amendments to BTS 2015/2205,” Sept. 29, 2021, available at <https://www.bankofengland.co.uk/paper/2021/derivatives-clearing-obligation-modifications-to-reflect-interest-rate-benchmark-reform>.

⁷² ESMA, Final Report, “On draft RTS on the clearing and derivative trading obligations in view of the benchmark transition to risk free rates,” Nov. 18, 2021, at 36-38, 63, available at https://www.esma.europa.eu/sites/default/files/library/esma70-156-4953_final_report_on_the_co_and_dto_re_benchmark_transition.pdf. In choosing to replace its USD LIBOR swap clearing requirement with a USD SOFR OIS clearing requirement, ESMA stated, “ESMA believes it is important to be consistent for the [clearing obligation] with the communication made by ESMA and other EU authorities, as well as the communications made by several other authorities in other jurisdictions and at the international level who expect entities to stop referencing LIBOR (including USD LIBOR) by the end of the year. If ESMA and other regulators’¹ expectations are fulfilled, there should no longer be material liquidity in OTC interest rate derivatives referencing USD LIBOR from the start of next year. Therefore, the liquidity criteria of the [European Market Infrastructure Regulation] procedure would no longer be met at the end of the year. Following from this, ESMA is proposing to remove the USD LIBOR classes from the clearing obligation and the RTS has been modified accordingly.” *Id.* at 31. However, as shown in tables 4 and 5 below, there continues to be trading activity in USD LIBOR swaps.

⁷³ *E.g.*, TD Bank Letter (suggesting that the Commission’s clearing requirement “may be updated to reflect those of UK and EU”); ISDA Letter (“The market needs global conformity with respect to mandated clearing as much as possible.”); ACLI Letter (“ESMA has issued its Final Report on Draft RTS on the Clearing and Derivative Trading Obligations in View of the Benchmark Transition to Risk Free Rates, which includes a recommendation to remove classes of swaps referencing EONIA (EUR) and LIBOR (GBP, JPY and USD) from its clearing obligation. We encourage the Commission similarly to remove classes of swaps referencing IBORs – including USD-LIBOR – from the clearing requirement.”); Eurex

Commission to maintain its USD LIBOR clearing requirement until such time as that rate is unavailable.⁷⁴ Maintaining the clearing requirement for USD LIBOR swaps, and SGD SOR-VWAP swaps, until those rates cease publication would reflect both international coordination and input from responses to the RFI.

Request for Comment

The Commission requests comment regarding implementing changes to the existing interest rate swap clearing requirement, including when to remove the USD LIBOR and SGD SOR-VWAP swap clearing requirements.

V. PROPOSED DETERMINATION ANALYSIS FOR RFR OIS

The Commission is proposing to modify its interest rate swap clearing requirement to include OIS referencing RFRs by adopting a new clearing requirement determination. The Commission has completed a review of the current RFR OIS offered for clearing and is prepared to consider the specific statutory factors required to make a new clearing requirement determination.

A. General Description of Information Considered

Letter (“Eurex Clearing notes that it previously responded to [ESMA’s] request for comment . . . and strongly encourages continued cooperation among the Commission, ESMA, and other regulators to facilitate international cooperation and global convergence in the transition to the RFRs to the extent possible. . . . Eurex Clearing believes the Commission and ESMA should coordinate their decision on a prospective removal of the USD LIBOR from the clearing obligation and implementation of a clearing obligation on SOFR OIS.”).

⁷⁴ *E.g.*, AIMA Letter (“The RFI notes that the U.K. Financial Conduct Authority has determined that USD LIBOR in the overnight and 12-month tenors will cease after June 30, 2023, and that USD LIBOR in 1-month, 3-month and 6-month tenors will not be representative after that date. Until such time, we believe the Commission should maintain its clearing requirement for USD LIBOR as it continues to monitor the developments associated with LIBOR’s cessation.”) (footnote omitted); Citadel Letter (“While we support updating the clearing requirement to include certain OTC derivatives referencing SOFR, it remains premature to remove the clearing requirement for OTC derivatives referencing USD LIBOR. This is because material volumes continue to be executed in USD LIBOR swaps that are currently subject to the clearing requirement, particularly in the dealer-to-customer segment of the market.”); MFA Letter (“Since trading activity continues to occur in USD LIBOR swaps as well, USD LIBOR should not be removed from the Swap Clearing Requirement until such time as the rate is not available (either because the rate is permanently discontinued or is deemed non-representative as of its cessation date).”).

CME, LCH, and Eurex provided the Commission with regulation § 39.5(b) submissions relating to RFR OIS.⁷⁵ In addition to the DCOs' submissions, the Commission looks to the ability of each DCO to clear RFR OIS, DCO swap data, swap data repository (SDR) data, publicly available data, the rule frameworks and risk management policies of each DCO, and information provided in response to the RFI.

This proposed clearing requirement determination is distinguishable from prior determinations insofar as it responds to a public and private sector, consensus-driven market event that has resulted, or will result, in liquidity shifting to new benchmark rates from rates that have become, or will soon become, unavailable. In that sense, central clearing in the RFR OIS markets, which rely on benchmark rates that are less susceptible to manipulation, may offer unique benefits that prior interest rate swap market clearing did not.⁷⁶ As a result of this, and in light of the quick pace of market adoption along with DCOs' willingness to provide clearing for a wide variety of RFR swaps, the Commission believes the RFR swap markets are prepared for this clearing requirement determination proposal.

B. Consistency with DCO Core Principles

Section 2(h)(2)(D)(i) of the CEA requires the Commission to determine whether a clearing requirement determination would be consistent with core principles for DCOs set forth in section 5b(c)(2) of the CEA.⁷⁷ CME, LCH, and Eurex are registered DCOs, and currently clear the RFR OIS identified in Table 2 above. CME, LCH, and Eurex are required to comply with the DCO core principles (and applicable Commission

⁷⁵ Regulation § 39.5(b) submissions from DCOs are available on the Commission's website, www.cftc.gov, under DCO Swaps Submissions.

⁷⁶ A discussion of the costs and benefits of this proposed rulemaking appears below.

⁷⁷ 7 U.S.C. 2(h)(2)(D)(i). The core principles address numerous issues, including financial resources, participant and product eligibility, risk management, settlement procedures, default management, system safeguards, reporting, recordkeeping, public information, and legal risk, among other subjects. 7 U.S.C. 7a-1(c)(2). The Commission implemented the core principles through regulations that are applicable to registered DCOs. 17 CFR part 39.

regulations) with respect to the RFR OIS being considered by the Commission as part of this proposed determination, and are subject to the Commission’s DCO examination and risk surveillance programs.

The Commission believes that CME, LCH, and Eurex will be able to maintain compliance with the DCO core principles and applicable Commission regulations if the Commission adopts a clearing requirement determination for the RFR OIS. For the reasons discussed below, the Commission has preliminarily determined that subjecting any of the RFR OIS identified in this proposal to a clearing requirement is unlikely to impair CME’s, LCH’s, or Eurex’s ability to comply with the DCO core principles, along with applicable Commission regulations. Moreover, in their responses to the RFI, each DCO stated that requiring clearing of USD SOFR or other RFR OIS would not negatively affect their ability to comply with the DCO core principles and applicable Commission regulations.⁷⁸

While exempt DCOs are not subject to the DCO core principles *per se*, the Commission determined that each was subject to comparable, comprehensive supervision and regulation by its home country regulator before granting such DCOs an exemption from registration, as required by the CEA.⁷⁹ With regard to the two exempt DCOs that

⁷⁸ CMEG Letter (“CME Clearing currently offers clearing for swaps referencing SOFR and other alternative reference rates that are not currently subject to the Clearing Requirement . . . CME Group considers that should such swaps become subject to the Clearing Requirement this would not have any impact on CME Clearing’s ability to comply with the relevant core principles for DCOs”); LSEG Letter (“Provided that each DCO remains in control of setting its product eligibility criteria, the ability to comply with the core principles . . . would not be affected by the implementation of a clearing requirement for SOFR or any other relevant alternative reference rate”); and Eurex Letter (“Requiring the clearing of swaps referencing SOFR or other RFRs that are not currently subject to the Clearing Requirement will not affect Eurex Clearing’s ability to comply with the CEA’s core principles for DCOs.”).

⁷⁹ The Commission may exempt a DCO from registration if it determines that the DCO is subject to comparable, comprehensive supervision by appropriate government authorities in its home country. The Commission determined that JSCC demonstrated compliance with the requirements of the CEA for which it must comply in order to be eligible for an exemption from registration as a DCO. JSCC Order of Exemption from Registration, Oct. 26, 2015, at 1, available at <http://www.cftc.gov/ido/groups/public/@otherif/documents/ifdocs/jscdcoexemptorder10-26-15.pdf>; JSCC Amended Order of Exemption from Registration, May 15, 2017, at 1, available at <https://www.cftc.gov/sites/default/files/ido/groups/public/@otherif/documents/ifdocs/jscdcoexemptamorder5-15-17.pdf>. Likewise, HKEX is an exempt DCO that the Commission determined has demonstrated

offer RFR OIS for clearing, namely, JSCC and HKEX, the Commission believes that both DCOs will continue to comply with their home country law and regulations if the Commission adopts a clearing requirement determination for the RFR OIS.⁸⁰

Request for Comment

The Commission requests comment as to whether the proposed determination would adversely affect any DCO's ability to comply with the DCO core principles.

C. Consideration of the Five Statutory Factors

Set forth below is the Commission's consideration of the five factors set forth in section 2(h)(2)(D)(ii) of the CEA as they relate to OIS (i) denominated in USD and referencing SOFR; (ii) denominated in GBP and referencing SONIA; (iii) denominated in CHF and referencing SARON; (iv) denominated in JPY and referencing TONA; (v) denominated in EUR and referencing €STR; and (vi) denominated in SGD and referencing SORA.⁸¹

1. Factor (I)—Outstanding notional exposures and trading liquidity.

Liquidity has shifted, and continues to shift, from swaps referencing IBORs to swaps referencing RFRs. The first of the five factors under section 2(h)(2)(D)(ii) of the CEA requires the Commission to consider “the existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data” related to “a submission made [by a DCO].”⁸² The Commission reviewed data from multiple sources, including

compliance with the requirements of the CEA. OTC Clearing Hong Kong Limited Order of Exemption from Registration, Dec. 21, 2015, at 1, available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@otherif/documents/ifdocs/otcclearcoexemptorder12-21-15.pdf>. See also section V.C. for additional information regarding maintaining status as an exempt DCO.

⁸⁰ JSCC Letter (“Including JPY TONA OIS in the CFTC’s Clearing Requirement would not affect the ability of DCOs to comply with the CEA or the relevant legal and regulatory regime in any other jurisdiction.”).

⁸¹ The Commission is conducting this analysis only with respect to the swaps that would be added to the clearing requirement under this proposed determination. Modifications to the clearing requirement, such as removing swaps that are no longer offered for clearing from Commission regulation § 50.4, are not considered in this analysis.

⁸² 7 U.S.C. 2(h)(2)(D)(ii).

but not limited to data from SDRs, data from DCOs, and other, publicly available data (e.g., data published by ISDA). For purposes of this proposed rulemaking, the Commission principally presents notional and liquidity information based on the Commission's own collected data.

a. Outstanding notional exposures and trading liquidity

In assessing outstanding notional exposures and trading liquidity for a swap, the Commission reviews data to determine whether there is an active market for the swap, including whether there is a measurable amount of notional exposure and whether the swap is traded regularly as reflected by trade count, such that a DCO can adequately risk manage the swap. The data indicates that there is sufficient outstanding notional exposure and trading liquidity in RFR OIS to support a clearing requirement determination. Specifically, the data presented below generally demonstrates that there is significant activity in new USD SOFR, GBP SONIA, EUR €STR, CHF SARON, JPY TONA, and SGD SORA OIS trading. The Commission compiled the data used in tables 4-7 below from transaction data collected under part 45 of the Commission's regulations.⁸³

In Table 4 below, the Commission provides estimates of notional transacted by month for various categories of RFR OIS, and IBOR fixed-to-floating and basis swaps, for the period beginning November 1, 2021 and ending January 31, 2022. The data in Table 4 generally indicates significant, and relatively steady or increasing, amounts of notional transacted in RFR OIS from November 2021 through January 2022. The data also illustrates that there was comparatively little notional transacted during the same

⁸³ The data presented in these tables is the same as the data used to create the Commission's weekly swaps report. This data represents only those swaps that are reported to the CFTC's registered SDRs by swap market participants. The Commission's weekly swaps report currently incorporates data from three SDRs (CME Group SDR, DTCC Data Repository, and ICE Trade Vault). The raw SDR data has been filtered to represent, as accurately as possible, the market-facing trades that occur and excludes certain inter-affiliate transactions. For more information about the data components in the weekly swaps report, please visit the CFTC's webpage available at: <https://www.cftc.gov/MarketReports/SwapsReports/index.htm>.

time period in fixed-to-floating swaps referencing IBORs that ceased or became nonrepresentative in December 2021 and January 2022.

The Commission notes, however, that significant amounts of notional were transacted in USD LIBOR fixed-to-floating swaps, and that while notional traded per month in USD SOFR OIS nearly doubled between December 2021 and January 2022, the amount of such notional transacted in January 2022 was still less than half that of the amount of notional transacted during the same month in USD LIBOR fixed-to-floating swaps.⁸⁴ Thus, it appears that while the transition of liquidity from USD LIBOR fixed-to-floating swaps to USD SOFR OIS is well underway, it is not yet complete.

TABLE 4—ESTIMATED NOTIONAL TRANSACTED (USD BILLIONS)⁸⁵

<u>Product</u>	<u>November 2021</u>	<u>December 2021</u>	<u>January 2022</u>
USD SOFR OIS	\$2,384	\$2,011	\$3,918
USD LIBOR Fixed-to-Floating Swaps	6,674	4,409	9,598
USD LIBOR- LIBOR Basis Swaps	1,049	602	292
EUR €STR OIS	3,394	2,022	3,488
EUR EONIA OIS	2	8	0
CHF SARON OIS	208	108	130

⁸⁴ Table 4 shows notional volume in USD LIBOR more than doubling from December 2021 to January 2022, but Table 5 below shows only a slight increase in trade count, suggesting the average trade size doubled in USD LIBOR but actually fell slightly in USD SOFR.

⁸⁵ The data in Table 4 is based on the Commission's weekly swaps report data. In this table, a notional figure of \$0 billion indicates that the notional transacted during a given time period was less than \$1 billion.

<u>Product</u>	<u>November 2021</u>	<u>December 2021</u>	<u>January 2022</u>
CHF LIBOR Fixed-to-Floating Swaps	62	0	0
GBP SONIA OIS	5,852	3,151	4,149
GBP LIBOR Fixed-to-Floating Swaps	340	205	2
JPY TONA OIS	425	360	377
JPY LIBOR Fixed- to-Floating Swaps	45	15	0
SGD SORA OIS	74	41	119
SGD SOR Fixed- to-Floating Swaps	8	3	5

Table 5 that follows this paragraph provides estimates of trade counts for the same categories of RFR and IBOR swaps during the same three-month period. The data in Table 5 indicates that, with regard to RFR OIS, monthly trade count generally increased or was relatively steady between November 2021 and January 2022, with an especially pronounced increase in the number of USD SOFR OIS transactions. Conversely, trade counts for swaps referencing IBORs that ceased or became nonrepresentative in December 2021 and January 2022 dropped off precipitously by January 2022. While there were still a significant number of USD LIBOR fixed-to-floating swap transactions during the three-month period that Table 5 measures, the monthly trade count for such transactions declined significantly during that period.

TABLE 5—ESTIMATED TRADE COUNT⁸⁶

<u>Product</u>	<u>November 2021</u>	<u>December 2021</u>	<u>January 2022</u>
USD SOFR OIS	18,484	19,110	41,728
USD LIBOR Fixed-to-Floating Swaps	48,245	29,309	30,749
USD LIBOR- LIBOR Basis Swaps	1,025	831	329
EUR €STR OIS	8,415	5,420	8,962
EUR EONIA OIS	7	1	0
CHF SARON OIS	2,698	1,574	2,283
CHF LIBOR Fixed-to-Floating Swaps	390	19	0
GBP SONIA OIS	24,275	12,913	17,654
GBP LIBOR Fixed-to-Floating Swaps	2,061	1,286	12
JPY TONA OIS	5,311	4,639	5,141
JPY LIBOR Fixed- to-Floating Swaps	577	69	9
SGD SORA OIS	2,422	1,846	3,794

⁸⁶ The data in Table 5 is based on the Commission's weekly swaps report data.

<u>Product</u>	<u>November 2021</u>	<u>December 2021</u>	<u>January 2022</u>
SGD SOR Fixed-to-Floating Swaps	197	94	69

Table 6 that follows this paragraph presents estimates of the percentage of notional cleared for the RFR OIS subject to this proposed determination, based on notional transacted by month during the period beginning November 1, 2021 and ending January 31, 2022. The data in Table 6 illustrates that, with respect to the RFR OIS, significant amounts of notional are already being cleared voluntarily. The proportion of notional transacted each month from November 2021 through January 2022 that was cleared was consistently high—approaching 100%—with regard to OIS referencing each of USD SOFR, GBP SONIA, EUR €STR, CHF SARON, JPY TONA, and SGD SORA.

TABLE 6—ESTIMATED PERCENTAGE OF NOTIONAL CLEARED (BASED ON NOTIONAL TRANSACTED BY MONTH)⁸⁷

<u>OIS</u>	<u>Percentage Notional Cleared – November 2021</u>	<u>Percentage Notional Cleared – December 2021</u>	<u>Percentage Notional Cleared – January 2022</u>
USD SOFR	96.3%	94.9%	95.1%
GBP SONIA	98.8%	98.7%	97.8%
EUR €STR	99.0%	99.2%	97.6%
CHF SARON	99.6%	98.1%	99.2%
JPY TONA	96.6%	98.7%	98.0%
SGD SORA	98.2%	98.6%	98.7%

⁸⁷ The data in Table 6 is based on the Commission’s weekly swaps report data.

Table 7 that follows this paragraph presents a breakdown of notional transacted and trade count for the period beginning January 1, 2022 and ending January 31, 2022, by tenor, for the relevant RFR OIS. Table 7 illustrates that RFR OIS are being cleared across a wide range of maturities. By notional and trade count, most clearing activity occurs in RFR OIS dated between 6 months and 15 years. However, the Commission notes that with respect to USD SOFR and GBP SONIA OIS in particular, there is also significant clearing activity in swaps dated 15 years or greater.

TABLE 7—ESTIMATED CLEARED NOTIONAL AND TRADE COUNT BY TENOR (JANUARY 2022 TRANSACTION DATA)⁸⁸

<u>OIS</u>	<u>Tenor</u>	<u>Notional Cleared</u> <u>(USD Billions)</u>	<u>Trade Count</u>
USD SOFR	7 days-3 months	\$199	213
	3-6 months	210	296
	6 months-1 year	191	498
	1-5 years	1,328	8,841
	5-15 years	1,559	22,230
	>15 years	234	7,589
GBP SONIA	7 days-3 months	778	434
	3-6 months	1,136	470
	6 months-1 year	673	357
	1-5 years	846	5,016
	5-15 years	503	7,570
	>15 years	124	3,351
EUR €STR	7 days -3 months	336	210

⁸⁸ The data in Table 7 is based on the Commission's weekly swaps report data. Tenor length is approximate. In Table 7, a notional figure of \$0 billion USD indicates that the notional transacted during a given time period was less than \$1 billion.

<u>OIS</u>	<u>Tenor</u>	<u>Notional Cleared</u> <u>(USD Billions)</u>	<u>Trade Count</u>
	3-6 months	302	226
	6 months-1 year	1,295	642
	1-5 years	1,110	3,365
	5-15 years	329	3,487
	>15 years	32	865
CHF SARON	7 days -3 months	7	11
	3-6 months	16	26
	6 months-1 year	6	12
	1-5 years	56	625
	5-15 years	42	1,447
	>15 year	2	135
JPY TONA	7 days -3 months	12	10
	3-6 months	20	20
	6 months-1 year	15	30
	1-5 years	122	718
	5-15 years	164	2,801
	>15 years	36	1,455
SGD SORA	7 days -3 months	2	10
	3-6 months	2	12
	6 months-1 year	16	122
	1-5 years	69	1,480
	5-15 years	29	2,114
	>15 years	0	8

In addition to this transaction-level data, Table 8 that follows this paragraph presents open swaps data illustrating outstanding notional in the RFR OIS subject to this proposed determination.

TABLE 8—OUTSTANDING NOTIONAL AS OF JANUARY 28, 2022⁸⁹

<u>OIS</u>	<u>Outstanding Notional (USD Billions)</u>
USD SOFR	\$8,558
GBP SONIA	23,363
EUR €STR	10,496
CHF SARON	1,730
JPY TONA	4,256
SGD SORA	449

Finally, to demonstrate that clearing has expanded beyond the short-dated maturities for USD SOFR fixed-to-floating swaps, in particular, the data in Table 9 that follows this paragraph reflects the total volumes of cleared outstanding notional swaps by tenor. The Commission has preliminarily determined that the data collectively indicates sufficient outstanding notional exposures and regular trading activity in RFR OIS for purposes of demonstrating the liquidity necessary for DCOs to risk manage these products and to support a proposed clearing requirement. The Commission anticipates that RFR OIS notional exposures and trading activity will increase over time as markets continue to adopt RFR OIS in place of swaps referencing IBORs that have, or will by mid-2023, become unavailable. In addition to the extensive data presented and analyzed in this proposal, and as discussed in detail below, the Commission is basing this

⁸⁹ The data in Table 8 represents swaps that have been cleared at CME, LCH, or Eurex and reported to the CFTC under part 39 of the Commission's regulations.

preliminary determination on its ongoing supervision of DCOs and its monitoring of the cleared interest rate swap market for purposes of risk surveillance.

TABLE 9—OUTSTANDING NOTIONAL AS OF JANUARY 25, 2022⁹⁰

<u>OIS</u>	<u>Tenor</u>	<u>Notional Cleared (USD Billions)</u>
USD LIBOR	0-1 months	\$118
	>1 month to 3 months	299
Fixed-to-Floating Swaps	>3 months to 1 year	876
	>1-3 years	1,933
	>3-5 years	848
	>5-7 years	509
	>7-10 years	426
	>10-15 years	249
	>15-25 years	291
	>25-35 years	137
	>35 years	13
	USD SOFR	0-1 months
>1 month to 3 months		220
Fixed-to-Floating Swaps	>3 months to 1 year	741
	>1-3 years	985
	>3-5 years	269
	>5-7 years	110
	>7-10 years	125
	>10-15 years	54
	>15-25 years	59
	>25-35 years	41
	>35 years	4

Request for Comment

The Commission requests comment and any relevant market analysis regarding the sufficiency of outstanding notional exposures and trading liquidity in USD SOFR, GBP SONIA, EUR €STR, CHF SARON, JPY TONA, and SGD SORA OIS, including for the proposed termination date ranges, to support a clearing requirement.

The Commission invites commenters to submit additional data from any available data sources.

b. Pricing data

⁹⁰ The data in Table 9 represents swaps that have been cleared at CME, LCH, or Eurex and reported to the CFTC under part 39 of the Commission's regulations.

The Commission regularly reviews pricing data for the RFR OIS subject to this proposed determination and has found that these OIS are capable of being priced off of deep and liquid markets. Commission staff regularly receives and reviews margin model information from DCOs that includes particular procedures that they follow to ensure that market liquidity exists in order to close out a position in a stressed market, including the time required to determine a price.⁹¹ Because of the stability of access to pricing data from these markets, the pricing data for the OIS that are the subject of this proposed determination is generally viewed as being reliable. Based on this information, the Commission has preliminarily determined that there is adequate pricing data to support required clearing of RFR OIS.

In addition, as part of their regulation § 39.5(b) submissions, the registered DCOs that clear the RFR OIS subject to this proposed determination provided information to support the Commission's conclusion that there exists adequate pricing data to justify a clearing requirement determination. In its regulation § 39.5(b) submissions, CME provided data regarding transaction volumes and market participation, and LCH provided information on daily volumes, and noted that pricing data for each of the RFR OIS that it clears is available from brokers. LCH also noted the range of maturities for which quotes can be obtained from brokers. In its submissions to the Commission, Eurex provided relevant language from its FCM Regulations and Clearing Conditions regarding determination of daily pricing. Eurex stated that it believes its reliance on Reuters for pricing data is accurate because it is a readily available and conventional source. Eurex

⁹¹ As discussed further below, Commission staff receives and reviews margin model information from the registered DCOs that clear these swaps, including information regarding how those DCOs would ensure that liquidity exists in order to exit a position in a stressed market. For purposes of the first statutory factor, the Commission considers possible periods of market stress, particularly when assessing whether there is sufficient liquidity and pricing data. Second Determination, 81 FR at 71210 (noting that the Commission considered "the effect a new clearing mandate will have on a DCO's ability to withstand stressed market conditions" as part of its analysis in connection with the Second Determination).

noted that it also can receive pricing data from Bloomberg and has multiple backup sources.

In the RFI, the Commission specifically requested feedback on whether adequate pricing data exists for DCO risk and default management of swaps referencing USD SOFR. CME, LCH, and Eurex each stated that adequate pricing data exists for DCO risk and default management of USD SOFR swaps.⁹² Respondents to the RFI also provided support for the conclusion that sufficient liquidity and pricing data exists in RFR OIS markets to withstand stressed market conditions.⁹³

Request for Comment

The Commission requests comment and any relevant market analysis regarding whether there is adequate pricing data for DCO risk and default management of the products subject to this proposal, including with regard to the proposed stated termination date ranges.

The Commission also requests comment regarding whether DCOs offering clearing for RFR OIS markets would be able to risk manage these products during stressed market conditions.

2. Factor (II)—Availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure

⁹² CMEG Letter (“CME Clearing has accepted SOFR swaps for clearing since October 2018. Throughout this time there has been, and continues to be, adequate pricing data for DCO risk and default management of swaps referencing SOFR given the depth and liquidity of SOFR markets.”); LSEG Letter (“SOFR liquidity and related pricing data has developed to an adequate extent and continues to further increase. We also note that the number of underlying transactions supporting the production of the SOFR rate itself is very high, supporting the rate’s robustness. Such robustness, transparency and confidence in the SOFR rate is reflected in the swap market, both in terms of trading and clearing volumes, including in relation to the availability of pricing data. This ultimately means that in the case of a default, there would be adequate swap pricing data for LCH to manage such default.”); Eurex Letter (“Eurex Clearing believes there is adequate pricing data for DCO risk and default management of swaps referencing SOFR.”). JSCC did not have any specific responses related to this question, as JSCC “[does] not have a plan to clear swaps referencing SOFR.” JSCC Letter.

⁹³ LSEG noted significant increases in USD SOFR volumes after SOFR First, and Eurex noted that liquidity in USD SOFR swaps increased considerably after March 5, 2021. LSEG and Eurex Letters. TD Bank agreed that market participants have observed sufficient outstanding notional exposures and trading liquidity in swaps referencing USD SOFR during both stressed and non-stressed market conditions to support a clearing requirement. TD Bank Letter.

Section 2(h)(2)(D)(ii)(II) of the CEA requires the Commission to take into account the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the proposed classes of swaps on terms that are consistent with the material terms and trading conventions on which they are now traded. Based on their regulation § 39.5(b) submissions, as well as ongoing oversight, the Commission believes that each of the registered DCOs has developed rule frameworks, capacity, operational expertise and resources, and credit support infrastructure to clear the interest rate swaps they currently clear, including the RFR OIS subject to this proposal, on terms that are consistent with the material terms and trading conventions on which those swaps are being traded. The Commission subjects each of the registered DCOs to ongoing review, risk surveillance, and examination to ensure compliance with the CEA's core principles and Commission regulations, including with respect to the submitted swaps.⁹⁴

Each of the registered DCOs has procedures pursuant to which they regularly review their clearing of the RFR OIS subject to this proposal in order to confirm or adjust margin and other risk management tools. When reviewing each of the registered DCOs' risk management tools, the Commission considers whether the DCO is able to manage risk during stressed market conditions to be one of the most significant considerations. Each of the registered DCOs has developed detailed risk management practices, including a description of risk factors considered when establishing margin levels.⁹⁵ The

⁹⁴ In order to be registered with the Commission, a DCO must comply with the DCO core principles under section 5b of the CEA and applicable Commission regulations. Once a DCO is registered with the Commission, Commission staff periodically examine each DCO to determine whether the DCO is maintaining compliance with the CEA and Commission regulations. In addition, Commission staff monitors the risks posed to and by DCOs, clearing members, and market participants, and conducts independent stress testing.

⁹⁵ *E.g.*, historical volatility, intraday volatility, seasonal volatility, liquidity, open interest, market concentration, and potential moves to default. For additional information, each of CME, LCH, and Eurex has published a document outlining its compliance with the Principles for Financial Market Infrastructures (PFMI) published by the Committee on Payments and Market Infrastructures (CPMI; formerly, CPSS) and IOSCO. CPSS-IOSCO Principles for Financial Market Infrastructure (PFMI), Apr. 16, 2012, available at

Commission reviews and oversees each of the registered DCOs' risk management practices and development of margin models. Margin models are further refined by stress testing and daily back testing. The Commission also considers stress testing and back testing when assessing whether each of the registered DCOs can clear swaps safely during stressed market conditions.

The registered DCOs clearing the RFR OIS subject to this proposed determination design and conduct stress tests, and Commission staff monitors development of these stress tests. Each of the registered DCOs also conducts reverse stress tests to ensure that their default funds are sized appropriately and to ascertain whether any changes to their financial resources or margin models are necessary.⁹⁶ Commission staff monitors markets in real-time and also performs stress tests against the DCOs' margin models and may recommend changes to a margin model. The registered DCOs conduct back testing on a daily basis to ensure that the margin models capture market movements for member portfolios.⁹⁷

Before offering a new product for clearing, each of the DCOs considers stress tests and back testing results in determining whether it has sufficient financial resources to offer new clearing services. The Commission also reviews initial margin models and

<https://www.bis.org/cpmi/publ/d101.htm>. See CMEG, CME Clearing: PFMI Disclosure, Nov. 30, 2021, available at <https://www.cmegroup.com/clearing/risk-management/files/cme-clearing-principles-for-financial-market-infrastructures-disclosure.pdf>; LCH PFMI Self-Assessment 2020, available at https://www.lch.com/system/files/media_root/CPMI%20IOSCO%20Self%20Qualitative%20Assessment%20of%20LCH%20LTD_1.pdf; and Eurex Clearing AG, Assessment of Eurex Clearing AG's compliance against the PFMI and disclosure framework associated to the PFMI, Feb. 16, 2021, available at https://www.eurex.com/resource/blob/2446522/22f4869a8649f15b54a1e86bf635c63c/data/cpss-iosco-pfmi_assessment_2020_en.pdf.

⁹⁶ Reverse stress testing uses plausible market movements that could deplete guaranty funds and cause large losses for top clearing members. For example, CME, LCH, and Eurex may use scenarios for stress testing and reverse stress testing that capture, among other things, historical price volatilities, shifts in price determinants and yield curves, multiple defaults over various time horizons, and simultaneous pressures in funding and asset markets.

⁹⁷ Back testing tests margin models to determine whether they are performing as intended, and checks whether margin models produce margin coverage levels that meet the DCO's established standards. Back testing helps CME, LCH, and Eurex determine whether their clearing members satisfy the required margin coverage levels and liquidation timeframe.

default resources to ensure that the DCOs can risk manage their portfolio of products offered for clearing. This combination of stress testing and back testing in anticipation of offering new products for clearing provides the registered DCOs with greater certainty that new product offerings will be risk-managed appropriately. The process of stress testing and back testing also gives the DCOs practice incorporating the new product into their models. In addition to the Commission's surveillance and oversight, each of the registered DCOs continues to monitor and test their margin models over time so that they can operate effectively in stressed and non-stressed market environments. Registered DCOs review and validate their margin models regularly.⁹⁸

Each registered DCO monitors and manages credit risk exposure by asset class, clearing member, account, or individual customer. They manage credit risk by establishing position and concentration limits based on product type or counterparty. These limits reduce potential market risks so that DCOs are better able to withstand stressed market conditions. Each of the registered DCOs monitors exposure concentrations and may require additional margin deposits for clearing members with weak credit scores, with large or concentrated positions, with positions that are illiquid or exhibit correlation with the member itself, and/or where the member has particularly

⁹⁸ Exempt DCOs, such as JSCC and HKEX, are subject to oversight by their home country regulators, along with regulations regarding risk management. For instance, JSCC is subject to the supervision of JFSA. JSCC, Principles for Financial Market Infrastructures Disclosure, Mar. 31, 2021, at 19, available at https://www.jpex.co.jp/jsc/en/company/cimhll0000000osu-att/JSCC_PFMI_Disclosure_20210331_EN.pdf. In granting JSCC's order of exemption, the Commission determined that JSCC is subject to comparable, comprehensive supervision and regulation by its home country regulator. See JSCC Order of Exemption from Registration, Oct. 26, 2015, at 1, available at <http://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/jscdcoexemptorder10-26-15.pdf>; JSCC Amended Order of Exemption from Registration, May 15, 2017, at 1, available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@otherif/documents/ifdocs/jscdcoexemptamdorder5-15-17.pdf>. Among other requirements, JSCC must provide the Commission with an annual certification that it continues to observe the PFMI in all material respects, and the Commission must receive annually, at JSCC's request, a certification from JFSA that JSCC is in good regulatory standing. Likewise, HKEX is overseen by HKMA, which provides ongoing supervision, and must meet the same requirements for registration as an exempt DCO as JSCC. See HKFE Clearing Corporation Limited, Principles for Financial Market Infrastructures Disclosure, Feb. 2021, available at https://www.hkex.com.hk/-/media/HKEX-Market/Services/Clearing/Listed-Derivatives/PFMI/HKCC_PFMI_Disclosure_Feb2021.pdf?la=en.

large exposures under stress scenarios. Registered DCOs also can call for additional margin, on top of collecting initial and variation margin, to meet the current DCO exposure and protect against stressed market conditions.⁹⁹

In support of its ability to clear the RFR OIS subject to this proposal, CME's regulation § 39.5(b) submissions cite to its rulebook to demonstrate the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear interest rate swap contracts on terms that are consistent with the material terms and trading conventions on which the contracts are traded. LCH's submissions state that it has a well-developed rule framework and support infrastructure for clearing interest rate swaps, which it leverages to offer clearing services for the RFR OIS subject to this proposal. Eurex's submissions state that Eurex has a well-developed rule framework and support infrastructure for clearing the RFR OIS that are subject to this proposal. Eurex further states that it has the appropriate risk management, operations, and technology capabilities to ensure that it is able to liquidate positions in such swaps in an orderly manner in the event of a clearing member default, and that the RFR OIS are subject to margin and clearing fund requirements set forth in Eurex's FCM Regulations and Clearing Conditions.

For all of these reasons, the Commission has preliminarily determined that the application of DCO risk management practices to the RFR OIS subject to this proposed clearing requirement determination should ensure that the swaps subject to this proposal can be cleared safely, even during times of market stress. For additional information related to this factor, please see public disclosures made CME, LCH, and Eurex.¹⁰⁰

⁹⁹ As a general matter, any DCO offering RFR OIS for clearing, including exempt DCOs, would follow this risk management approach with regard to offering these products for clearing.

¹⁰⁰ CME, CME Clearing: Principles for Financial Market Infrastructures Disclosure, Nov. 30, 2021, available at <https://www.cmegroup.com/clearing/risk-management/files/cme-clearing-principles-for-financial-market-infrastructures-disclosure.pdf>; LCH Ltd., CPMI – IOSCO Self-Assessment 2020, Mar. 31, 2020, available at

Request for Comment

The Commission requests comments concerning all aspects of this factor, including whether commenters agree that DCOs offering to clear the RFR OIS subject to this proposed clearing requirement determination can satisfy the factor's requirements.

3. Factor (III)—Effect on the mitigation of systemic risk.

Section 2(h)(2)(D)(ii)(III) of the CEA requires the Commission to consider the effect of the clearing requirement on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the DCO available to clear the contract. As presented in the data and discussion above, the Commission believes that the market for each RFR OIS subject to this proposed determination is significant and mitigating counterparty credit risk through clearing likely would reduce systemic risk in the interest rate swap market generally. While not every individual RFR OIS market has large outstanding notional exposures, each such market is important, and as liquidity shifts from IBOR swaps to RFR OIS, continuity of clearing for RFR OIS serves to reduce systemic risk.

In its regulation § 39.5(b) submissions, CME explains the benefits of centralized clearing, including freer counterparty credit lines, enhanced risk management, operational efficiencies, and ease of offsetting risk exposures. LCH's submissions note that clearing avoids complex bilateral relationships, provides for default management, and enhances transparency into the risks posed by swap positions. Eurex's submissions highlight the benefits of reduction of counterparty risk, margin and collateral efficiencies, protections for customer assets, and legal certainty. Each DCO's submissions indicate that they

https://www.lch.com/system/files/media_root/CPMI%20IOSCO%20Self%20Qualitative%20Assessment%20of%20LCH%20LTD_1.pdf; Eurex, "Assessment of Eurex Clearing AG's compliance against the CPMI-IOSCO Principles for financial market infrastructures (PFMI) and the disclosure framework associated to the PFMI," Feb. 28, 2022, available at *https://www.eurex.com/resource/blob/2973806/422b675a412d96e3c8cf97a570b899a2/data/cpps-iosco-pfmi_assessment_2021_en.pdf*. As explained above, similar disclosures are available for JSCC and HKEX.

maintain adequate resources to clear the swaps that are the subject of this proposal.

Additionally, in responding to the RFI, JSCC noted that it has been clearing JPY TONA OIS since 2014 “without facing any challenge from a governance, rule framework, operational, resourcing, or credit support infrastructure perspective.”¹⁰¹

In responding to the RFI, CME noted that mitigation of systemic risk is one of the key advantages of centralized clearing over bilateral arrangements.¹⁰² LSEG stated that “a clearing requirement will mitigate systemic risk, making sure that USD SOFR risk moves from the bilateral space to the cleared market to the necessary extent.”¹⁰³

Additionally, Citadel noted that “[a]pplying a clearing requirement to OTC derivatives referencing SOFR will ensure these markets develop as centrally-cleared markets,” and further noted that “central clearing provides greater systemic risk mitigation than bilateral margining for uncleared swaps.”¹⁰⁴ TD Bank agreed that a clearing requirement for USD SOFR swaps “might increase the clearing rate and therefore mitigate[] systemic risk even more,” but TD Bank also noted that the “bulk” of USD SOFR swaps are already voluntarily cleared.¹⁰⁵

Centrally clearing the RFR OIS subject to this proposal through a registered or exempt DCO should reduce systemic risk by providing counterparties with daily mark-to-market valuations upon which to exchange variation margin pursuant to the DCO’s risk management framework and requiring posting of initial margin to cover potential future exposures in the event of a default. In addition, swaps transacted through a DCO are

¹⁰¹ JSCC Letter.

¹⁰² CMEG Letter.

¹⁰³ LSEG Letter.

¹⁰⁴ Citadel Letter.

¹⁰⁵ TD Bank Letter. *See also* Tradeweb Letter (“The swap clearing and execution requirements under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act have increased investor protections, improved market liquidity, and reduced systemic risk, especially in the dealer-to-customer market. It will be critical for the CFTC to maintain these market improvements as new swap transactions increasingly utilize alternative risk-free reference rates . . .”).

secured by the DCO's guaranty fund and other available financial resources, which are intended to cover extraordinary losses that would not be covered by initial margin.

Central clearing was developed and designed to handle significant concentration of risk. Each of the DCOs that clears the RFR OIS covered by this proposal has a procedure for closing out and/or transferring a defaulting clearing member's positions and collateral.¹⁰⁶ Transferring customer positions to solvent clearing members in the event of a default is critical to reducing systemic risk. DCOs are designed to withstand defaulting positions and to prevent a defaulting clearing member's loss from spreading further and triggering additional defaults. To the extent that introduction of an RFR OIS clearing requirement increases the number of clearing members and market participants in the interest rate swap market, then DCOs may find it easier to transfer positions from defaulting clearing members if there is a larger pool of potential clearing members to receive the positions.¹⁰⁷

Each DCO has experience risk managing interest rate swaps, and the Commission believes that the DCOs have the necessary financial resources available to clear the RFR OIS that are the subject of this proposal. Accordingly, the Commission believes that these DCOs would be able to manage the risk posed by clearing the new RFR OIS that would be required to be cleared by virtue of this proposal.

In addition, the Commission believes that the central clearing of the RFR OIS that are to be added under this proposal should serve to mitigate counterparty credit risk, thereby potentially reducing systemic risk. Having considered the likely effect on the mitigation of systemic risk, the Commission is proposing to add these RFR OIS to the clearing requirement.

¹⁰⁶ For further discussion of treatment of customer and swap counterparty positions, funds, and property in the event of the insolvency of a DCO or one or more of its clearing members, please see Factor (V)—Legal certainty in the event of insolvency, section V.C below.

¹⁰⁷ The Commission recognizes that with high rates of voluntary clearing RFR OIS at this time, the prospect of adding additional clearing members and market participants in these swaps is limited.

Request for Comment

The Commission requests comments concerning the proposal to add these RFR OIS to the clearing requirement, with regard to the possible reduction of systemic risk.

How, if at all, should the Commission consider the ongoing implementation of uncleared swap margin requirements for swap dealers in assessing this factor?

4. Factor (IV)—Effect on competition

Section 2(h)(2)(D)(ii)(IV) of the CEA requires the Commission to take into account the effect on competition, including appropriate fees and charges applied to clearing. Of particular concern to the Commission is whether this proposed determination would harm competition by creating, enhancing, or entrenching market power in an affected product or service market, or facilitating the exercise of market power.¹⁰⁸ Market power is viewed as the ability to raise prices, including clearing fees and charges, reduce output, diminish innovation, or otherwise harm customers as a result of diminished competitive constraints or incentives.¹⁰⁹

The Commission has identified one putative service market as potentially affected by this proposed clearing determination: a DCO service market encompassing those clearinghouses that currently clear the RFR OIS subject to this proposal.¹¹⁰ The Commission recognizes that this proposed clearing requirement potentially could impact competition within the affected market. Of particular importance to whether any such impact is positive or negative, is: (1) whether the demand for these clearing services and swaps is sufficiently elastic that a small but significant price increase above competitive levels would prove unprofitable because users of the interest rate swap products and

¹⁰⁸ First Determination, 77 FR at 74313; Second Determination, 81 FR at 71220.

¹⁰⁹ First Determination, 77 FR at 74313 (discussing market power as described under U.S. Department of Justice guidelines). *See generally* U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines (Horizontal Merger Guidelines) at section 1 (Aug. 19, 2010), available at <https://www.justice.gov/sites/default/files/atr/legacy/2010/08/19/hmg-2010.pdf>.

¹¹⁰ First Determination, 77 FR at 74298; Second Determination, 81 FR at 71220. The DCO service market includes the registered and exempt DCOs that currently offer RFR OIS for clearing.

DCO clearing services would substitute other clearing services coexisting in the same market(s); and (2) the potential for new entry into this market. The availability of substitute clearing services to compete with those encompassed by this proposed determination, and the likelihood of timely, sufficient new entry in the event prices do increase above competitive levels, each operate independently to constrain anticompetitive behavior.

Any competitive import likely would stem from the fact that the proposed determination and regulations would remove the alternative of not clearing for RFR OIS subject to this proposal. The proposed determination would not specify who may or may not compete to provide clearing services for the RFR OIS subject to this proposal, as well as those not required to be cleared.

Removing the choice to enter into a swap without submitting it for clearing under this proposed rulemaking is not determinative of negative competitive impact. Other factors, including the availability of other substitutes within the market or potential for new entry into the market, may constrain market power. The Commission does not foresee that the proposed determination constructs barriers that would deter or impede new entry into a clearing services market,¹¹¹ and the Commission anticipates that a determination to modify the clearing requirement for interest rate swaps could foster an environment conducive to new entry. For example, the proposed clearing determination is likely to reinforce, if not encourage, growth in demand for clearing services. Demand growth, in turn, can enhance the sales opportunity, a condition hospitable to new entry.¹¹²

¹¹¹ That said, the Commission recognizes that (1) to the extent the clearing services market for the interest rate swaps identified in this proposal, after foreclosing uncleared swaps, would be limited to a concentrated few participants with highly aligned incentives, and (2) the clearing services market is insulated from new competitive entry through barriers (*e.g.*, high sunk capital cost requirements, high switching costs to transition from embedded incumbents, and access restrictions), the proposed determination could have a negative competitive impact by increasing market concentration.

¹¹² *See, e.g.*, Horizontal Merger Guidelines, section 9.2 (entry likely if it would be profitable which is in part a function of “the output level the entrant is likely to obtain”).

Moreover, to the extent that there are high rates of voluntary clearing in the RFR OIS subject to this proposed determination already, a regulatory requirement to clear such swaps would provide additional certainty that those high rates of clearing would remain constant.

Respondents to the RFI who provided feedback regarding the potential effect on competition due to a modified clearing requirement did not identify any potential negative effects. For instance, Citadel stated that applying a clearing requirement to OTC derivatives referencing USD SOFR would increase liquidity and competition, citing, among other research, a study that found that “the Commission’s clearing and trading reforms led to a significant reduction in execution costs in the USD interest rate swap market, with market participants saving as much as \$20 million - \$40 million per day.”¹¹³ LSEG, Eurex, JSCC, and TD Bank also did not identify potential competition-related concerns.¹¹⁴

Request for Comment

The Commission requests comment on the extent to which: (1) entry barriers currently do or do not exist with respect to a clearing services market for the RFR OIS to be added to the clearing requirement under this proposal; (2) the proposed determination

¹¹³ Citadel Letter (citing Staff Working Paper No. 580 “Centralized trading, transparency and interest rate swap market liquidity: evidence from the implementation of the Dodd-Frank Act,” Bank of England, Jan. 2016, available at <http://www.bankofengland.co.uk/research/Documents/workingpapers/2016/swp580.pdf>).

¹¹⁴ LSEG Letter (“LCH does not believe that adopting a clearing requirement for a new product that references an alternative reference rate, or expanding the scope of an existing clearing requirement to cover additional maturities would create conditions that increase or facilitate an exercise of market power over clearing services by any DCO. Any clearing requirement that applies equally to all DCOs that provide clearing services for a product would not adversely affect competition.”); Eurex Letter (“Eurex Clearing believes there is healthy competition currently in the market for the clearing of swaps referencing the RFRs and, previously, the LIBORs. Eurex Clearing does not believe that adopting a clearing requirement for a new product that references an RFR or expanding the scope of the Clearing Requirement to cover additionally maturities would cause [adverse effects related to competition or an increase in the cost of clearing services].”); JSCC Letter (“In relation to TONA OIS, it has been accepted for clearing at 3 registered DCOs Therefore, we believe that replacing JPY-LIBOR with TONA OIS would not change (i) the existing competition for clearing services of JPY swaps nor (ii) the cost of clearing services, in any regard.”); and TD Bank Letter (“We do not perceive these issues [related to adverse competitive effects or increasing costs of clearing services] to come” as a result of a clearing requirement for a new product that references an alternative reference rate or expanding the scope of the clearing requirement to cover additional maturities).

may lessen or increase these barriers; and (3) the proposed determination otherwise may encourage, discourage, facilitate, and/or dampen new entry into the market. In addition to what is noted above, the Commission requests comment, and quantifiable data, on whether the required clearing of any or all of the RFR OIS to be added to the clearing requirement under this proposal will generate conditions that create, increase, or facilitate an exercise of: (1) clearing services market power in CME, LCH, Eurex, and/or any other clearing service market participant, including conditions that would dampen competition for clearing services and/or increase the cost of clearing services, and/or (2) market power in any product markets for interest rate swaps, including conditions that would dampen competition for these product markets and/or increase the cost of RFR OIS to be added to the clearing requirement under this proposal. The Commission seeks comment, and quantifiable data, on the likely cost increases associated with clearing, particularly those fees and charges imposed by DCOs, and the effects of such increases on counterparties currently participating in the market.

The Commission also requests comment regarding whether commenters have any concerns regarding access to clearing services in the market for any RFR OIS subject to this proposed determination.

5. Factor (V)—Legal certainty in the event of insolvency

Section 2(h)(2)(D)(ii)(V) of the CEA requires the Commission to take into account the existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property. The Commission is proposing this clearing requirement determination based on its view that there is reasonable legal certainty with regard to the treatment of customer and swap counterparty positions, funds, and property in connection with cleared swaps, including the RFR OIS

subject to this proposal, in the event of the insolvency of the relevant DCO or one or more of the DCO's clearing members.

The Commission believes that, in the case of a clearing member insolvency at CME, where the clearing member is the subject of a proceeding under the U.S. Bankruptcy Code, subchapter IV of Chapter 7 of the U.S. Bankruptcy Code (11 U.S.C. 761-767) along with parts 22 and 190 of the Commission's regulations would govern the treatment of customer positions.¹¹⁵ Pursuant to section 4d(f) of the CEA, 7 U.S.C. 4d(f), a clearing member accepting funds from a customer to margin a cleared swap must be a registered futures commission merchant (FCM). Pursuant to 11 U.S.C. 761-767 and part 190 of the Commission's regulations, the customer's interest rate swap positions, carried by an insolvent FCM, would be deemed "commodity contracts."¹¹⁶ As a result, neither a clearing member's bankruptcy nor any order of a bankruptcy court could prevent CME from closing out/liquidating such positions. However, customers of clearing members would have priority over all other claimants with respect to customer funds that had been held by the defaulting clearing member to margin swaps, such as the RFR OIS subject to this proposal.¹¹⁷ Thus, customer claims would have priority over proprietary claims and general creditor claims. Customer funds would be distributed to swap customers, including interest rate swap customers, in accordance with Commission regulations and section 766(h) of the Bankruptcy Code. Moreover, the Bankruptcy Code and the Commission's rules thereunder (in particular 11 U.S.C. 764(b) and 17 CFR 190.07) permit the transfer of customer positions and collateral to solvent clearing members.

¹¹⁵ An FCM or DCO also may be subject to resolution under Title II of the Dodd-Frank Act to the extent it would qualify as a covered financial company (as defined in section 201(a)(8) of the Dodd-Frank Act). Under Title II, different rules would apply to the resolution of an FCM or DCO. Discussion in this section relating to what might occur in the event an FCM or DCO defaults or becomes insolvent describes procedures and powers that exist in the absence of a Title II receivership.

¹¹⁶ If an FCM is registered as a broker-dealer, certain issues related to its insolvency proceeding would be governed by the Securities Investor Protection Act, as well.

¹¹⁷ Claims seeking payment for the administration of customer property would share this priority.

Similarly, 11 U.S.C. 761-767 and part 190 would govern the bankruptcy of a DCO where the DCO is the subject of a proceeding under the U.S. Bankruptcy Code, in conjunction with DCO rules providing for the termination of outstanding contracts and/or return of remaining clearing member and customer property to clearing members.

With regard to LCH, the Commission understands that in general the default of an LCH clearing member would be governed by LCH's rules, and LCH would be permitted to close out and/or transfer positions of a defaulting clearing member. The Commission further understands that, under applicable law, LCH's rules governing a clearing member default would supersede insolvency laws in the clearing member's jurisdiction. For an FCM based in the United States and clearing at LCH, the applicable law as a general matter, would be the U.S. Bankruptcy Code and part 190 of the Commission's regulations. According to LCH's regulation § 39.5(b) submissions, the insolvency of LCH itself would be governed by English insolvency law, which protects the enforceability of the default-related provisions of LCH's rulebook, including in respect of compliance with applicable provisions of the U.S. Bankruptcy Code and part 190 of the Commission's regulations. LCH has obtained, and made available to the Commission, legal opinions that support the existence of such legal certainty in relation to the protection of customer and swap counterparty positions, funds, and property in the event of the insolvency of one or more of its clearing members.¹¹⁸

On December 20, 2018, the Commission issued permission for Eurex to begin clearing swap transactions on behalf of customers of FCMs.¹¹⁹ According to Eurex's

¹¹⁸ Letters of counsel on file with the Commission.

¹¹⁹ Commission Letter Nos. 18-30, 18-31, and 18-32. Additionally, in responding to the RFI, Eurex noted that, with respect to Eurex clearing members that are FCMs and that clear swaps under Eurex's U.S. regulatory framework, Eurex's FCM Regulations "foresee a clear process for a potential porting of client-related transactions to a replacement clearing member following the termination of a clearing member." Eurex Letter. In the event that the termination is based on an Insolvency Termination Event, as defined in Eurex's FCM Regulations, Eurex will seek to coordinate with the CFTC and bankruptcy trustee with respect to porting the positions. This procedure applies to all cleared products. However, Eurex noted that

regulation § 39.5(b) submissions, Eurex observes the PFMI. Eurex represented that in February 2015, it published an assessment of its compliance with the PFMI, which was reviewed and validated by an independent outside auditor. The assessment concluded that Eurex fully complies with the PFMI, and Eurex's default management procedures were assessed to be certain in the event of its or a clearing member's insolvency with regard to the treatment of customer and counterparty positions and collateral. Such certainty continues to be reflected in Eurex's most recent PFMI assessment.¹²⁰

According to Eurex's regulation § 39.5(b) submissions, a potential insolvency of Eurex Clearing, and the operation of default management procedures under Eurex's Clearing Conditions, would be governed by German law, with the exception of certain FCM Regulations and Clearing Conditions that relate to cleared swaps customer collateral that are governed by U.S. law.¹²¹

Finally, as exempt DCOs, JSCC and HKEX demonstrate they are subject to ongoing comparable, comprehensive supervision by their home country regulator with regard to legal certainty in the event of insolvency.¹²² Both exempt DCOs maintain disclosures discussing the ways in which they comply with the PFMI, including principles related to legal certainty in the event of insolvency.¹²³ Principle 1 of the PFMI

following IBOR conversion events, it no longer clears any trades where obtaining new GBP LIBOR, JPY LIBOR, or CHF LIBOR fixings (or reliance on the relevant fallback provisions) would be necessary. *Id.*

¹²⁰ Eurex Clearing AG, Assessment of Eurex Clearing AG's compliance against the PFMI and disclosure framework associated to the PFMI, available at https://www.eurex.com/resource/blob/2446522/22f4869a8649f15b54a1e86bf635c63c/data/cpss-iosco-pfmi_assessment_2020_en.pdf.

¹²¹ For example, in the case of an insolvency termination event, as defined in Eurex's Clearing Conditions, the relevant FCM clearing member would be subject to an insolvency proceeding pursuant to applicable U.S. law, and Eurex would seek to coordinate with the Commission and the bankruptcy trustee (or comparable person responsible for administering the proceeding) with respect to the transfer of FCM client transactions and eligible margin assets allocated to the relevant FCM client. *Id.* at 100.

¹²² Exempt DCOs are not permitted to clear swaps for U.S. customers pursuant to regulation § 39.6(b)(1). Accordingly, this discussion of JSCC's and HKEX's insolvency regimes does not address issues related to U.S. customer clearing.

¹²³ JSCC, Principles for Financial Market Infrastructures Disclosure, Mar. 31, 2021, available at https://www.jpx.co.jp/jsc/en/company/cimh11000000osu-att/JSCC_PFMI_Disclosure_20210331_EN.pdf; and HKFE Clearing Corporation Limited, Principles for Financial Market Infrastructures Disclosure, Feb.

provides that a CCP should have a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities, in all relevant jurisdictions.¹²⁴ Among other key considerations for this factor, “[t]he legal basis should provide a high degree of certainty for each material aspect of an FMI’s activities in all relevant jurisdictions.”¹²⁵ The PFMI also provide that a CCP should have effective and clearly defined rules and procedures to manage a participant default.¹²⁶ JSCC’s and HKEX’s PFMI disclosures provide, among other information, a discussion of the applicable law and legal basis for their clearing activities, as well as the way in which their rules address insolvency events.¹²⁷

Lastly, JSCC has provided information regarding how it would address a default by a clearing member under its rules,¹²⁸ including information regarding the treatment of certain RFR swaps for default management purposes. Specifically, in its responses to the RFI, JSCC described the process by which it offered TIBOR-TONA basis swaps as a way to transition away from IBOR swaps without incident.¹²⁹

Request for Comment

The Commission requests comment regarding all aspects of this factor, including whether there is reasonable legal certainty, in the event of an insolvency of CME, LCH,

2021, available at https://www.hkex.com.hk/-/media/HKEX-Market/Services/Clearing/Listed-Derivatives/PFMI/HKCC_PFMI_Disclosure_Feb2021.pdf?la=en.

¹²⁴ PFMI, Principle 1.

¹²⁵ PFMI, Principle 1, Key consideration 1.

¹²⁶ PFMI, Principle 13.

¹²⁷ JSCC, Principles for Financial Market Infrastructures Disclosure, Mar. 31, 2021, at 19-24, 83-91, available at https://www.jpjx.co.jp/jsc/en/company/cimhll0000000osu-att/JSCC_PFMI_Disclosure_20210331_EN.pdf; and HKFE Clearing Corporation Limited, Principles for Financial Market Infrastructures Disclosure, Feb. 2021, at 20-21, 58-60, available at https://www.hkex.com.hk/-/media/HKEX-Market/Services/Clearing/Listed-Derivatives/PFMI/HKCC_PFMI_Disclosure_Feb2021.pdf?la=en.

¹²⁸ See JSCC’s relevant PFMI disclosures.

¹²⁹ JSCC Letter (stating that, for default management purposes, TIBOR-TONA basis swaps will be treated in the same manner as cleared JPY TONA OIS. JSCC noted that creation of these basis swaps was a temporary measure and the basis swaps will expire at the settlement of the rates that were fixed prior to the end of 2021).

Eurex, or one or more of any of these DCOs' clearing members, with regard to the treatment of customer and swap counterparty positions, funds, and property.

The Commission requests comment on whether U.S. swap counterparties have concerns about the applicability of any non-U.S. jurisdiction's law to U.S. persons clearing swaps at DCOs located outside of the United States.

The Commission requests comment regarding legal certainty with respect to an event of an insolvency for an exempt DCO, such as JSCC or HKEX, particularly with regard to the treatment of swap counterparty positions, funds, and property.

VI. PROPOSED IMPLEMENTATION SCHEDULE AND COMPLIANCE DATES

The Commission phased in compliance with the First Determination according to the schedule contained in regulation § 50.25.¹³⁰ Under this schedule, compliance was phased in by the type of market participant entering into a swap subject to the First Determination. The phase-in occurred over a 270-day period following publication of the final rule in the *Federal Register*. The Commission also phased in compliance with the Second Determination according to the schedule contained in regulation § 50.26. However, the Commission decided to adopt one compliance date for all market participant types, because many market participants were already clearing the products subject to the determination and the Commission had already adopted a clearing requirement determination for the interest rate swap class.¹³¹ The Commission decided to tie the compliance date for each product to the first compliance date for a market participant in a non-U.S. jurisdiction.¹³²

¹³⁰ Swap Transaction Compliance and Implementation Schedule: Clearing Requirement Under Section 2(h) of the CEA, 77 FR 44441 (July 30, 2012).

¹³¹ Second Determination, 81 FR at 71227.

¹³² *Id.* at 71227 – 71228.

Importantly, DCOs have largely completed IBOR swap conversions. Many market participants already clear the RFR OIS subject to this proposed determination. Several other jurisdictions are requiring, or are anticipated to soon require, clearing of these swaps. While some responses to the RFI recommended that the Commission proceed through an interim final rule process,¹³³ other responses asked for longer periods of time for market participants to comment on proposed rules, and come into compliance with proposed rule changes.¹³⁴ LSEG recommended that the effective date be set “not too far from the completion of the Commission’s review” in order to “reduce uncertainty in the market and limit the risk of bifurcation of liquidity between the cleared and uncleared market for the LIBOR rates that ceased on December 31, 2021 and their respective replacement rates.”¹³⁵

Recognizing all these factors, the Commission proposes to adopt one compliance date for all market participant types and amend regulation § 50.26 to reflect that the compliance date shall be 30 days after publication of the final rule in the *Federal Register*. If the clearing requirement compliance date falls on a Saturday, Sunday, or U.S. Federal public holiday, the compliance date will be the next available business day. No compliance date will be set on a day when markets are not open in the United States.

As a technical amendment, because the Commission is proposing to remove certain interest rate swaps from regulation § 50.4, it is also proposing to remove those same swaps from regulation § 50.26. The Commission is proposing this change for consistency and to eliminate any confusion that might arise if different swap products are included in §§ 50.4 and 50.26. Additionally, the Commission proposes technical

¹³³ *E.g.*, Tradeweb Letter; Citadel Letter.

¹³⁴ ICI Letter (requesting a 90-day comment period); ISDA Letter (“Members request a minimum of 6 months’ notice to implement new [clearing requirement]”); ACLI Letter (“To ensure a smooth implementation of any expanded clearing requirement, a minimum of six months should be provided between the adoption of an expanded clearing requirement and the effective date of the requirement, to give market participants time to ready systems and processes.”).

¹³⁵ LSEG Letter.

revisions related to the formatting of the table of compliance dates for required clearing of credit default swaps in regulation § 50.26.

Request for Comment

The Commission requests comment on whether setting a compliance date 30 days after publication of the final rule in the *Federal Register* provides market participants with sufficient notice and opportunity to comply with this proposed determination.

VII. COST BENEFIT CONSIDERATIONS

A. Statutory and Regulatory Background

Proposed revised regulation § 50.4(a) identifies certain swaps that would be required to be cleared under section 2(h)(1)(A) of the CEA in addition to those currently required to be cleared by existing regulations §§ 50.2 and 50.4(a), and removes certain other swaps currently required to be cleared from the clearing requirement. The proposed clearing requirement amendments are designed to update the Commission's regulations in light of the interest rate swap market's move away from use of swaps referencing IBORs to swaps referencing RFRs. At the current time, most RFR OIS are being cleared voluntarily so the proposed regulation largely serves to ensure that the swap market under the Commission's jurisdiction continues to clear all RFR OIS subject to this proposal. The continued central clearing of RFR OIS may limit the counterparty risk associated with such swaps, thereby mitigating the possibility of such risks having a systemic impact, which might cause or exacerbate instability in the financial system. In addition, required clearing of RFR OIS would reflect the global effort to rely on benchmark rates that are less susceptible to manipulation.

The Commission believes this proposal is consistent with the principle that the use of central clearing can reduce systemic risk, which was one of the fundamental premises of the Dodd-Frank Act and the 2009 commitments by the G20 nations. The

following discussion is a consideration of the costs and benefits of the Commission's proposed actions pursuant to the regulatory requirements discussed above.

B. Overview of Swap Clearing

1. How Clearing Reduces Risk

When a bilateral swap is cleared, the DCO becomes the counterparty to each original swap counterparty. This arrangement mitigates counterparty risk to the extent that the DCO may be a more creditworthy counterparty than the original swap counterparties. Central clearing reduces the interconnectedness of market participants' swap positions because the DCO, an independent third party that takes no market risk, guarantees the collateralization of swap counterparties' exposures. DCOs have demonstrated resilience in the face of past market stress.

The Commission anticipates that DCOs will continue to be some of the most creditworthy swap counterparties because, among other things, they are able to monitor and manage counterparty risk effectively through (1) collection of initial and variation margin associated with outstanding swap positions; (2) marking positions to market regularly, usually multiple times per day, and issuing margin calls when the margin in a customer's account has dropped below predetermined levels that the DCO sets; (3) adjusting the amount of margin that is required to be held against swap positions in light of changing market circumstances, such as increased volatility in the underlying product; and (4) closing out swap positions if margin calls are not met within a specified period of time.

2. The Clearing Requirement and Role of the Commission

With the passage of the Dodd-Frank Act, Congress gave the Commission the responsibility for determining which swaps would be required to be cleared pursuant to section 2(h)(1)(A) of the CEA. Since 2012, there is ample evidence that the interest rate swap market has been moving toward increased use of central clearing in response to

both market incentives and clearing requirements.¹³⁶ Now with the IBOR transition completed for most LIBOR rates and with most RFR OIS already being voluntarily cleared, as discussed further below, it is possible that the effect of this proposal will be limited to ensuring that market participants continue to clear the RFR OIS subject to the proposal.¹³⁷ The Commission has preliminarily determined that the costs and benefits related to the required clearing of the RFR OIS to be added under this proposal are attributable, in part to (1) Congress’s stated goal of reducing systemic risk by, among other things, requiring clearing of swaps; and (2) the Commission’s exercise of its discretion in selecting swaps or classes of swaps to achieve those ends.

C. Consideration of the Costs and Benefits of the Commission’s Actions

1. CEA Section 15(a)

Section 15(a) of the CEA requires the Commission to “consider the costs and benefits” of its actions before promulgating a regulation under the CEA or issuing certain orders.¹³⁸ Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness and financial integrity; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations (collectively referred to herein as the Section 15(a) Factors). Accordingly, the Commission considers the costs and benefits associated with the proposed determination in light of the Section 15(a) Factors. In the sections that follow, the Commission considers: (1) The costs and benefits of required clearing for the RFR OIS

¹³⁶ Second Determination, 81 FR at 71210; BIS, “Statistical release: OTC derivatives at end-December 2020,” May 12, 2021, at 4, Graph 4, available at https://www.bis.org/publ/otc_hy2105.pdf (charting central clearing rates for interest rate swaps from 2012 to 2020 and noting a particularly significant rise during the 2012-2015 period). *See also* CMEG Letter (discussing adoption of central clearing); CCP12 Letter (same).

¹³⁷ It is possible that some market participants would respond to the requirement that RFR OIS be cleared by decreasing their use of such swaps, particularly if the cost of clearing increases in the future relative to the cost of not clearing. Thus, there is some uncertainty regarding how the proposed rule will affect the quantity of swaps that are cleared.

¹³⁸ 7 U.S.C. 19(a).

to be added under this proposed rule as well as the costs and benefits of removing certain swaps from required clearing; (2) the alternatives contemplated by the Commission and their costs and benefits; and (3) the impact of required clearing for the proposed swaps on the Section 15(a) Factors.

The Commission is considering these costs and benefits against a baseline of the current set of interest rates swaps subject to the clearing requirement adopted under regulation § 50.4. This proposed determination would add certain RFR OIS to the clearing requirement and it would remove certain swaps referencing IBORs from the clearing requirement. In most cases, this would be a simultaneous exchange: as an IBOR swap is withdrawn from the clearing requirement, an RFR swap is added. However, in a few cases, there may be a delay, or even an overlap during which products referencing the IBOR rate and the RFR are both subject to the clearing requirement (*e.g.*, if the Commission adopts a clearing requirement for USD SOFR swaps 30 days after the publication of the final rule in the *Federal Register* and does not remove the clearing requirement for USD LIBOR swaps until July 1, 2023, then requirements to clear USD LIBOR swaps, including USD LIBOR fixed-to-floating swaps, would for a period of time coexist with requirements to clear USD SOFR OIS). As seen in Table 6 above, almost all transactions in interest rate swaps that would be subject to the proposed clearing requirement are cleared voluntarily today, so that the percentage of such swaps that would be cleared following implementation of the rule is unlikely to increase materially. The Commission's analysis below compares amendments in this proposed determination to the clearing requirement in effect today. The costs discussed recognize the current industry practice of high levels of RFR OIS clearing.

The Commission understands that the swap market functions internationally with (i) transactions that involve U.S. firms and DCOs occurring across different international jurisdictions; (ii) some entities organized outside of the United States that are, or may

become, Commission registrants or registered entities; and (iii) some entities that typically operate both within and outside the United States and that follow substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, this discussion of costs and benefits refers to the effects of the proposed regulations on all relevant swaps activity, whether based on their actual occurrence in the United States or on their connection with activities in, or effect on, commerce of the United States, pursuant to section 2(i) of the CEA.¹³⁹

2. Costs and Benefits of Required Clearing Under the Proposed Determination

Market participants may incur certain costs in order to clear the RFR OIS to be added to the clearing requirement in the proposed rule. For example, to the extent that there are market participants entering into RFR OIS that are not already clearing interest rate swaps voluntarily or pursuant to the Commission's prior clearing requirement determinations, such market participants may incur certain startup and ongoing costs related to developing technology and infrastructure, updating or creating new legal agreements, service provider fees, and collateralization of the cleared positions.¹⁴⁰ The costs of collateralization, on the other hand, are likely to vary depending on whether an entity is subject to the margin requirements for uncleared swaps¹⁴¹ and capital

¹³⁹ Pursuant to section 2(i) of the CEA, activities outside of the United States are not subject to the swap provisions of the CEA, including any rules prescribed or regulations promulgated thereunder, unless those activities either "have a direct and significant connection with activities in, or effect on, commerce of the United States"; or contravene any rule or regulation established to prevent evasion of a CEA provision enacted under the Dodd-Frank Act. 7 U.S.C. 2(i).

¹⁴⁰ These per-entity costs would vary widely depending on the needs of such market participants. Costs likely would be lower for market participants who already clear interest rate swaps covered by the Commission's prior clearing requirement determinations. The opposite would be true for market participants that start clearing because of the proposed determination. However, given the high rates of voluntary clearing, there are likely to be few, if any, new participants.

¹⁴¹ The Commission's margin requirements for uncleared swaps are codified in subpart E of part 23 of the Commission's regulations.

requirements, and the differential between the cost of capital for the assets they use as collateral and the returns realized on those assets.

As noted in Table 6 above, almost all RFR OIS subject to this proposed determination are already cleared voluntarily, and market participants currently clearing RFR OIS already realize the benefits of clearing. Adoption of the proposed determination would ensure that the percentage of RFR OIS that are cleared would remain high in the future and that these benefits would continue to be realized. These benefits include reduced and standardized counterparty credit risk, increased transparency, and easier swap market access for market participants who are required to clear. Together, these benefits contribute significantly to the stability and efficiency of the financial system, but they are difficult to quantify with any degree of precision.

While there may be a benefit to removing certain swaps from required clearing, such as fewer costs to market participants who no longer have to submit such swaps to clearinghouses, in this instance, the reason the Commission is removing certain swaps referencing IBORs from the clearing requirement is because they are, with limited exceptions, no longer offered for clearing. The swap rates that the Commission is proposing to remove from the clearing requirement, other than USD LIBOR and SGD SOR-VWAP, should no longer be available or used by market participants, pursuant to broad international consensus and industry progress, as described above.¹⁴² Therefore, the Commission preliminarily believes that removing these swaps referencing IBORs from the clearing requirement would not impose additional costs on market participants and would result in the benefit of market and regulatory certainty. There may be no meaningful benefit to market participants from this removal because they generally

¹⁴² Indeed, as noted above, regulators in the United States have called on market participants to cease new USD LIBOR activity.

cannot clear these swaps today. However, there may be benefits associated with the effort to reach broad consensus around the transition away from IBORs.

The Commission notes that any potential costs associated with the proposed determination should be viewed in light of the fact that each new swap that would be required to be cleared would stand in the place of a swap that is already subject to required clearing and that almost all of these swaps are cleared voluntarily.¹⁴³ Liquidity tied to IBORs has shifted, and will continue to shift, to RFRs as those IBORs are discontinued or become nonrepresentative. That shift has occurred, and continues to occur, as a result of numerous market events, including DCO conversions of IBOR swaps to RFR swaps, the operation of contractual fallbacks, and new use of RFRs in parallel with declining liquidity in IBOR swaps. The RFR OIS subject to this proposal are already widely cleared so that the costs associated with clearing these swaps are already being incurred.¹⁴⁴ Accordingly, the Commission anticipates that the additional cost of compliance for market participants would be *de minimis*.

Request for Comment

The Commission requests comment concerning the costs of clearing described above for various market participants and the extent to which they are already being incurred. The Commission requests comment from both U.S. and non-U.S. swap counterparties that may be affected by the proposed determination.

a. Technology, Infrastructure, and Legal Costs

Market participants already clearing swaps may incur costs in making necessary changes to technology systems to support the clearing required by the proposed rule if they are not yet clearing RFR OIS. To the extent that there are market participants who

¹⁴³ As noted above, while the Commission proposes to require clearing of USD SOFR and SGD SORA swaps effective 30 days after publication of the final rule in the Federal Register, the Commission proposes to remove USD LIBOR and SGD SOR-VWAP clearing requirements on a delayed basis, effective July 1, 2023.

¹⁴⁴ See section V.C above.

are not currently clearing RFR OIS, such market participants may incur costs if they need to implement technology to connect to FCMs that will clear their transactions.¹⁴⁵ The costs are likely to depend on the specific business needs of each entity and therefore would vary widely among market participants. As a general matter, given that most market participants already will have undertaken the steps necessary to move away from the use of IBOR swaps in the cleared interest rate swap market, the burden associated with required clearing of RFR OIS should be minimal.¹⁴⁶

With regard to costs, market participants who do not currently have established clearing relationships with an FCM will have to set up and maintain such a relationship in order to clear swaps that are required to be cleared. Market participants who transact a limited number of swaps per year likely will be required to pay monthly or annual fees that FCMs charge to maintain both the relationship and outstanding swap positions belonging to the customer. In addition, the FCM is likely to pass along fees charged by the DCO for establishing and maintaining open positions. It is likely that most market participants already will have had experience complying with prior clearing requirements and that the incremental burdens associated with clearing any of the new RFR OIS should be minimal, especially given that these products are intended to replace already widely cleared products.¹⁴⁷

¹⁴⁵ The Commission does not have the information necessary to determine either the costs associated with entities that need to establish relationships with one or more FCMs or the costs associated with entities that already have relationships with one or more FCMs but need to revise their agreements. Commenters are requested to provide the necessary data where available.

¹⁴⁶ *E.g.*, Tradeweb Letter (“In effect, the CFTC is not expanding the existing clearing determinations, rather it will be applying the existing IBOR determinations to contracts based on the new RFRs.”); Citadel Letter (“As noted above, OTC derivatives referencing SOFR are currently being cleared by DCOs in material volumes, demonstrating that the rule frameworks and operational infrastructure already exist to support a clearing requirement. Significant voluntary clearing demonstrates the confidence market participants have in the current DCO offerings.”); Eurex Letter (“Eurex Clearing does not believe that adopting a clearing requirement for swaps referencing SOFR would be any hindrance to trading activity in those swaps. Any such clearing requirements for the RFRs, if adopted, were already in effect for the IBOR-based rates being replaced.”).

¹⁴⁷ In responding to the RFI, TD Bank noted that the implementation of new clearing requirements to address the transition from IBORs to RFRs “should not materially increase costs” (but should be

Request for Comment

The Commission requests comment, including any quantifiable data and analysis, on the changes that market participants will have to make to their technological and legal infrastructures in order to clear the RFR OIS that are subject to the proposed determination. In particular, the Commission requests comment concerning how many market participants, if any, may have to establish new relationships with FCMs, or significantly upgrade those relationships based on the inclusion of these new products to the clearing requirement.

b. Ongoing Costs Related to FCMs and Other Service Providers

In addition to costs associated with technological and legal infrastructures, market participants transacting in RFR OIS subject to the proposed determination will face ongoing costs associated with fees charged by FCMs. DCOs typically charge FCMs an initial transaction fee for each cleared interest rate swap its customers enter, as well as an annual maintenance fee for each open position. The Commission understands that customers that occasionally transact in swaps are typically required to pay a monthly or annual fee to each FCM.¹⁴⁸ As noted, most RFR OIS transactions are already cleared, so that these costs are largely being incurred by market participants.

“forecasted appropriately to allow firms to become operationally ready”). TD Bank Letter. JSCC noted that “DCOs and market participants have already incurred significant costs to transition LIBOR swaps denominated in non-USD currencies to alternative reference rates” and stated that JSCC “[does] not believe there would be any additional costs to be borne by DCOs and market participants if the CFTC includes alternative reference rates, such as TONA OIS, in the Clearing Requirement.” JSCC Letter. ISDA stated that “[w]hile the changes in [the clearing requirement] will have a cost attached . . . these costs are part of the overall cost of LIBOR transition and spread across multiple jurisdictions.” ISDA Letter. ISDA noted that for institutional clients, additional costs “will be incremental as opposed to something completely new and potentially prohibitive,” but also noted that “[f]or smaller less sophisticated counterparties who do not have to currently clear, [a new clearing requirement] could be a significant cost that could deter them from hedging using swaps.” *Id.* ISDA requested that the Commission “not enact a [clearing requirement] . . . in a way that increases cost, for instance by providing [a] short notice period that would require the implementation of tactical solutions to meet short deadlines.” *Id.* ACLI encouraged the Commission to “consider whether the marginal risk mitigation benefits of an expanded clearing requirement outweigh the costs of compliance” in light of uncleared swap margin rules. ACLI Letter.

¹⁴⁸ The Commission does not have current information regarding such fees; commenters are requested to provide the necessary data where available.

As discussed above, it is difficult to predict precisely how the proposed requirement to clear RFR OIS will promote the use of swap clearing, as compared to the use of clearing that would occur in the absence of the requirement. However, as presented in the data above, the use of voluntary clearing is so high that the percentage of swaps that would be cleared following adoption of the rule is unlikely to increase materially. Some RFR OIS will continue to be uncleared pursuant the exceptions and exemptions set out in subpart C of part 50 of the Commission's regulations. According to Table 6, the percentage of swaps that are cleared in USD SOFR is about 95 to 96 percent. The Commission estimates that about 96 percent of non-inter-affiliate trades in USD LIBOR fixed-to-floating IRS were cleared as of January 2022.¹⁴⁹ The Commission anticipates that a similar percentage of RFR OIS subject to this proposal would continue to be cleared following the determination given that subpart C of part 50 has not changed. Because the clearing percentages in Table 6 for non-USD RFR OIS are even higher than for SOFR OIS, the increase in clearing as a result of this rule also will likely be *de minimis*. Any increase in the use of clearing due to the proposed determination would lead in most cases to an incremental increase in the transaction costs noted above. However, because most market participants already will have undertaken the steps necessary to accommodate the clearing of swaps subject to required clearing, the Commission anticipates that the burden associated with clearing RFR OIS should be minimal.

Request for Comment

The Commission requests comment regarding the fee structures of FCMs in general, and in particular as they relate to the clearing of the types of RFR OIS covered by the proposed rule.

¹⁴⁹ This estimate is based on swaps transacted after the most recent revisions to subpart C of part 50 went into effect (on or after December 30, 2020) so it captures all applicable exemptions from the swap clearing requirement.

c. Costs Related to Collateralization of Cleared Swap Positions

Market participants that enter into RFR OIS subject to the proposed rule will be required to post initial margin at a DCO. The Commission understands that the RFR OIS subject to this proposal are already being widely cleared on a voluntary basis, and so any additional amounts of initial margin that market participants would be required to post to a DCO as a result of the proposed determination likely would be relatively small. In reaching this preliminary view, the Commission considered situations where (1) uncleared RFR OIS may be otherwise collateralized;¹⁵⁰ (2) uncleared RFR OIS between certain SDs and “financial end-users” are, or will be, subject to initial and variation margin requirements under the Commission’s margin regulations for uncleared swaps;¹⁵¹ (3) the pricing of certain uncleared swaps may account for implicit contingent liabilities and counterparty risk; (4) not all RFR OIS will necessarily be eligible for clearing if they have terms that prevent them from being cleared;¹⁵² and (5) certain entities may elect an exception or exemption from the clearing requirement.¹⁵³

The Commission acknowledges that market participants who are not clearing voluntarily and not otherwise required to post margin or collateral may incur costs related to funding collateral once they are required to clear. The greater the funding cost relative to the rate of return on the asset used as initial margin, the greater the cost of procuring collateral.¹⁵⁴ Quantifying this cost with any precision is challenging because different

¹⁵⁰ *E.g.*, under the terms of a credit support annex.

¹⁵¹ Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016); Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 FR 71246 (Nov. 9, 2020).

¹⁵² For example, if such swaps do not meet the specifications set forth in proposed revised regulation § 50.4(a).

¹⁵³ See subpart C of part 50 (Exceptions and Exemptions to the Clearing Requirement).

¹⁵⁴ Certain entities, such as pension funds and asset managers, may use as initial margin assets that they already own. In such cases, market participants would not incur funding costs in order to post initial margin.

entities may have different funding costs and may choose assets with different rates of return.

Request for Comment

The Commission requests comments on all aspects of quantifying the cost of funding initial margin that would be required to be posted to a DCO pursuant to this proposed rule. In particular, the Commission requests comment on funding costs that market participants may face due to interest rates on bonds issued by a sovereign nation that also issues the currency in which the RFR OIS subject to this proposed determination is denominated. CME, LCH, and Eurex accept as initial margin bonds issued by several sovereigns, and market participants may post such bonds as initial margin if the Commission adopts this proposed rule.

The Commission recognizes further that the new initial margin amounts that would be required to be posted to DCOs for cleared RFR OIS will, for entities required to post initial margin under the uncleared swap margin regulations, replace the initial margin amount that has been, or will be, required to be posted to their swap counterparties, pursuant to the uncleared swap margin regulations. The uncleared swap margin regulations require SDs and certain “financial end-users” to post and collect initial and variation margin for uncleared swaps, subject to various conditions and limitations.¹⁵⁵

The Commission anticipates that the initial margin that would be required to be posted for a cleared swap to be added under this proposed determination would typically be less than the initial margin that would be required to be posted for uncleared swaps pursuant to the uncleared swap margin regulations. Whereas the initial margin

¹⁵⁵ See generally subpart E of part 23 of the Commission’s regulations. Swap clearing requirements under part 50 of the Commission’s regulations apply to a broader scope of market participants than the uncleared swap margin regulations. For example, under subpart E of part 23, a “financial end-user” that does not have “material swaps exposure” (as defined by regulation § 23.151) is not required to post initial margin, but such an entity may be subject to the swap clearing requirement. 17 CFR 23.151.

requirement for cleared swaps must be established according to a margin period of risk of at least five days,¹⁵⁶ under the uncleared swap margin regulations, the minimum initial margin requirement is set with a margin period of risk of 10 days or, under certain circumstances, less or no initial margin for inter-affiliate transactions.¹⁵⁷ Phase-in of the initial margin requirements for uncleared swaps began on September 1, 2016, and will be fully implemented by September 1, 2022. The requirement for entities subject to uncleared swap margin regulations to exchange variation margin was fully implemented on March 1, 2017.

With respect to swaps that would be added to the clearing requirement under this proposed determination, but not subject to the uncleared swap margin regulations, the Commission believes that the new initial margin amounts to be deposited would displace costs that are currently embedded in the prices and fees for transacting the swaps on an uncleared and uncollateralized basis, rather than add a new cost. Entering into a swap is costly for any market participant because of the default risk posed by its counterparty. When a market participant faces a DCO, the DCO accounts for that counterparty credit risk by requiring the market participant to post collateral, and the cost of capital for the collateral is part of the cost that is necessary to maintain the swap position. When a market participant faces an SD or other counterparty in an uncleared swap, however, the uncleared swap contains an implicit line of credit upon which the market participant effectively draws when its swap position is out of the money. Typically, counterparties charge for this implicit line of credit in the spread they offer on uncollateralized, uncleared swaps.¹⁵⁸ Additionally, because the counterparty credit risk that the implicit

¹⁵⁶ Commission regulation § 39.13(g)(2)(ii)(c), 17 CFR 39.13(g)(2)(ii)(c).

¹⁵⁷ Commission regulations §§ 23.154(b)(2)(i) and 23.159. *See generally* Margin and Capital Requirements for Covered Swap Entities, 80 FR 77840 (Nov. 3, 2015).

¹⁵⁸ It has been argued that the cash flows of an uncollateralized swap (*i.e.*, a swap with an implicit line of credit) are over time substantially equivalent to the cash flows of a collateralized swap with an explicit line of credit. *See generally* Antonio S. Mello & John E. Parsons, Margins, Liquidity, and the Cost of Hedging,

line of credit creates is the same as the counterparty risk that would result from an explicit line of credit provided to the same market participant, to a first order approximation, the charge for each should be the same as well.¹⁵⁹ This means that the cost of capital for additional collateral posted as a consequence of requiring uncollateralized swaps to be cleared takes a cost that is implicit in an uncleared, uncollateralized swap and makes it explicit.¹⁶⁰ This observation applies to capital costs associated with both initial margin and variation margin.

The proposed rule also may result in added operational costs for those few market participants who are not already clearing these swaps voluntarily. With uncleared swaps, counterparties may agree not to collect variation margin until certain thresholds of material swaps exposure are reached, thus reducing or eliminating the need to exchange variation margin as exposure changes.¹⁶¹ However, DCOs collect and pay variation margin daily, and sometimes more frequently. Increased required clearing therefore may increase certain operational costs associated with paying variation margin to the DCO.¹⁶²

The proposed rule may result in slight additional costs for clearing members in the form of guaranty fund contributions that are held by the DCO. However, it also could decrease guaranty fund contributions for certain clearing members. Once the proposed determination takes effect, there may be market participants that currently transact swaps bilaterally who would have to either become clearing members of a DCO or submit such

MIT Center for Energy and Environmental Policy Research, May 2012, available at <http://dspace.mit.edu/bitstream/handle/1721.1/70896/2012-005.pdf?sequence=1>.

¹⁵⁹ *Id.* Mello and Parsons state, “[h]edging is costly. But the real source of the cost is not the margin posted, but the underlying credit risk that motivates counterparties to demand that margin be posted.” *Id.* at 12. They also note that, “[t]o a first approximation, the cost charged for the non-margined swap must be equal to the cost of funding the margin account. This follows from the fact that the non-margined swap just includes funding of the margin account as an embedded feature of the package.” *Id.* at 15-16.

¹⁶⁰ But note that the cost may be greater for uncleared swaps as the initial margin is computed on a counterparty by counterparty basis, whereas in the clearing context, there is most likely greater opportunity for netting exposures at the DCO.

¹⁶¹ Among other things, the Commission’s part 23 regulations set forth material swap exposure thresholds above which the exchange of variation margin is no longer voluntary. 17 CFR 23.151 and 23.153.

¹⁶² However, exchange of variation margin will lower the build-up of current exposure.

swaps for clearing through an existing clearing member. A market participant that becomes a direct clearing member must make a guaranty fund contribution, while a market participant that clears its swaps through a clearing member may pay higher fees if the clearing member passes the costs of the guaranty fund contribution to its customers. While the addition of new clearing members and new customers for existing clearing members may result in an increase in guaranty fund requirements, it should be noted that if (1) new clearing members are not among the two clearing members used to calculate the guaranty fund and (2) any new customers trading through a clearing member do not increase the size of uncollateralized risks at either of the two clearing members used to calculate the guaranty fund, all else held constant, existing clearing members may experience a decrease in their guaranty fund requirement.

Request for Comment

The Commission requests comment regarding the total amount of additional collateral that would be posted due to required clearing of the RFR OIS covered by this proposed determination. The Commission also invites comment regarding (1) the cost of capital and returns on capital for that collateral, (2) the effects of required clearing on the capital requirements for financial institutions, and (3) the costs and benefits associated with operational differences related to the collateralization of uncleared versus cleared swaps. Please supply quantifiable data and analysis regarding these subjects, if possible.

3. Benefits of Clearing

As noted above, there are significant benefits to central clearing of swaps. These benefits include reducing and standardizing counterparty credit risk, improving market transparency, and promoting access to clearing services. Specifically, there are important risk mitigation benefits of clearing RFR OIS that replace IBOR swaps (which would be removed from the clearing requirement under the proposal). In addition, requiring the

central clearing of RFR OIS would promote regulatory continuity and cross-border harmonization of clearing requirements.

The Commission believes that while the requirement to margin uncleared swaps mitigates counterparty credit risk, such risk is mitigated further for swaps that are cleared through a central counterparty. Moreover, the proposed determination would apply to a larger set of market participants than the uncleared swaps margin requirements. Thus, to the extent that the proposed determination to add RFR OIS to the clearing requirement leads to increased clearing overall, these benefits are likely to result. As is the case for the costs noted above, it is likely that the use of clearing will not increase materially as a result of the proposed rule, but implementing a clearing requirement would help ensure the benefits of the proposed rule would continue to be realized as market participants continue to clear RFR OIS.

The proposed rule's requirement that certain swaps be cleared is intended to ensure that market participants will face a DCO, and therefore, will face a highly creditworthy counterparty. As discussed above, DCOs are some of the most creditworthy counterparties in the swap market because of the risk management tools they have available. The Commission recognizes that the beneficial value of the proposal to add RFR OIS to the clearing requirement may be lessened, in part, because the swap volumes that will be subject to a new clearing requirement are expected to be shifting from one set of swaps (IBORs) to another (RFRs) rather than a straightforward addition of new swap products to the clearing requirement.¹⁶³ Moreover, as noted, these benefits are already being realized for the large majority of these swaps that are cleared voluntarily.

Request for Comment

¹⁶³ As discussed in section IV.A above.

The Commission requests comment on whether benefits will result from the proposed rule, and, if so, the expected magnitude of such benefits. The Commission also requests comment on whether the proposed rule would provide benefits by furthering international harmonization of clearing requirements.

D. Costs and Benefits of the Proposed Rule as Compared to Alternatives

The proposed rule is a function of both the market importance of these products and the fact that they already are widely cleared. The Commission believes that these interest rate swaps should be required to be cleared because they are widely used and infrastructure for clearing and risk management of these swaps already exists.

Given the Commission's prior clearing requirement determinations, and the widespread use of clearing for RFR OIS to be added under this proposal, DCOs, FCMs, and market participants already have experience clearing the types of swaps proposed for required clearing. Because of the wide use of these swaps and their importance to the market, and because these swaps are already successfully being cleared, the Commission is proposing to include RFR OIS in the interest rate swap clearing requirement.

The Commission believes that RFR OIS should be added to the swap clearing requirement under this proposed determination after analyzing the factors under section 2(h)(2)(D) of the CEA, in order to promote consistency with its regulatory counterparts in other jurisdictions and to ensure that the benefits of required clearing accrue to the RFR OIS that replace IBOR swaps no longer offered for clearing.

The Commission could consider alternative implementation scenarios for its proposed RFR OIS clearing requirements, as discussed above. Specifically, the Commission could consider:

- i. Whether to remove existing requirements to clear USD LIBOR and SGD SOR-VWAP swaps 30 days after publication of the final rule in the *Federal Register* instead of on July 1, 2023. The Commission notes that liquidity in USD LIBOR swaps

may decline sufficiently over the coming months to support removing such swaps from the clearing requirement on a date earlier than July 1, 2023.

ii. Whether to delay implementation of the proposed requirement to clear USD SOFR and SGD SORA OIS until July 1, 2023 (or phase-in the compliance date) rather than to require compliance beginning 30 days after publication of the final rule in the *Federal Register*. The Commission is considering this alternative in the event that market participants have significant concerns regarding sufficiency of outstanding notional and liquidity (or pricing data) to support requiring clearing of USD SOFR swaps out to 50 years, and SGD SORA swaps out to 10 years, at an earlier time.

The Commission requests comment on these implementation alternatives.

Finally, the Commission may consider an alternative scenario in which it does not adopt any new clearing requirement for RFR OIS. Under that alternative, the cost to the market would be an increased risk of uncleared swaps (and the associated financial stability risks) should market participants decide to clear less in the future. The cost may be significant in this instance because of the potential effect on the market-wide effort to replace IBOR swaps with RFR swaps, but may be mitigated given the current high level of clearing. The benefit of not adopting any new clearing requirements would be a savings experienced by market participants that would not be required to clear new swaps referencing an RFR and did not otherwise find it beneficial to do so. However, given the high rate of voluntary clearing, any cost savings may be *de minimis*. In light of this, the Commission may be less likely to pursue this alternative without some type of significant change in the interest rate swap markets.

E. Section 15(a) Factors

The Commission anticipates that the proposed amendments to add and remove certain swaps from the clearing requirement will result in a slight increase in the already high use of clearing, although it is impossible to quantify with certainty the extent of that

increase.¹⁶⁴ This section discusses the expected results from an overall increase, or maintenance at high levels, in the use of swap clearing in terms of the factors set forth in section 15(a) of the CEA.

1. Protection of Market Participants and the Public

The required clearing of the RFR OIS to be added under this proposed rule should ensure the reduction of counterparty risk for market participants that clear those swaps, because they will be required to face the DCO rather than another market participant that lacks the full set of risk management tools that the DCO possesses. This also should reduce uncertainty in times of market stress because, for cleared trades, market participants facing a DCO would not be concerned with the impact of such stress on the solvency of their original counterparty. By proposing to require clearing of RFR OIS, all of which are already available for clearing and predominantly cleared voluntarily, the Commission aims to further encourage a smooth transition away from IBORs. More specifically, the registered DCOs currently clearing these RFR OIS would clear a slightly increased volume of swaps that they already understand and have experience managing.¹⁶⁵ Similarly, FCMs may realize slightly increased customer and transaction volume as the result of the requirement, but would not have to simultaneously learn how to operationalize clearing for the covered interest rate swaps.

¹⁶⁴ It is possible that the level of clearing overall may remain similar if the use of swaps referencing RFRs replaces the use of swaps referencing IBORs.

¹⁶⁵ See CMEG Letter (“CME Clearing currently accepts OIS referencing SOFR, SARON, €STR, SONIA and TONA . . . CME Clearing is therefore already in a position to support a Clearing Requirement in relation to these swaps.”); LSEG (noting RFR OIS that LCH already clears and discussing significant recent increases in liquidity in certain swaps, particularly JPY TONA and USD SOFR); Eurex Letter (“Eurex Clearing has a well-developed rule framework, compliance process and procedures, and support infrastructure to support clearing of swaps referencing the RFRs and already offers clearing of these swaps. Eurex Clearing has leveraged and will continue to leverage this operational capacity for the clearing of swaps referencing the RFRs and has the appropriate risk management, operations, technology, and compliance capabilities in place to continue to provide for compliance with all CEA core principles for DCOs.”). See also JSCC Letter (noting that JSCC has been clearing JPY TONA OIS since 2014 and that because “JPY swap market liquidity has already fully transitioned from IRS referencing LIBOR to TONA OIS,” there is “no concern for DCOs to accept [JPY TONA OIS] for clearing.”).

In addition, uncleared swaps subject to collateral agreements can be the subject of valuation disputes, which sometimes require several months or longer to resolve. Potential future exposures can grow significantly and even beyond the amount of initial margin posted during that time, leaving one of the two counterparties exposed to counterparty credit risk. DCOs virtually eliminate valuation disputes for cleared swaps, as well as the risk that uncollateralized exposure can develop and accumulate during the time when such a dispute would have otherwise occurred, thus providing additional protection to market participants who transact in swaps that are cleared. Because most RFR OIS are cleared voluntarily, these protections are currently being realized. Requiring clearing under part 50 of the Commission's regulations would ensure that they continue to be realized.

2. Efficiency, Competitiveness, and Financial Integrity of Swap Markets

Swap clearing, in general, reduces uncertainty regarding counterparty risk in times of market stress and promotes liquidity and efficiency during those times. Increased liquidity promotes the ability of market participants to limit losses by exiting positions effectively and efficiently when necessary in order to manage risk during a time of market stress. In addition, to the extent that positions move from facing multiple counterparties in the bilateral market to being cleared through a smaller number of clearinghouses, clearing facilitates increased netting. This reduces the amount of collateral that a party must post in margin accounts. As discussed above, in formulating this proposed determination, the Commission considered a number of specific factors that relate to the financial integrity of the swap markets. Specifically, as discussed above, the Commission assessed whether the registered DCOs that clear the RFR OIS that are the subject of this proposal have the rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear these swaps on terms that are consistent with the material terms and trading conventions on which the contract is then

traded.¹⁶⁶ The Commission also considered the resources of DCOs to handle additional clearing during stressed and non-stressed market conditions, as well as the existence of reasonable legal certainty in the event of a clearing member or DCO insolvency.

Also, as discussed above, bilateral swaps create counterparty risk that may lead market participants to discriminate among potential counterparties based on their creditworthiness. Such discrimination is expensive and time consuming insofar as market participants must conduct due diligence in order to evaluate a potential counterparty's creditworthiness. Requiring certain types of swaps to be cleared reduces the number of transactions for which such due diligence is necessary, thereby contributing to the efficiency of the swap markets. In proposing a clearing requirement for RFR OIS, the Commission must consider the effect on competition, including appropriate fees and charges applied to clearing. There are a number of potential outcomes that may result from required clearing. Some of these outcomes may impose costs, such as if a DCO possessed market power and exercised that power in an anticompetitive manner, and some of the outcomes would be positive, such as if the clearing requirement facilitated a stronger entry opportunity for competitors.¹⁶⁷ Because most of these swaps are cleared voluntarily, these effects on efficiency, competitiveness, and financial integrity are, to a large degree, currently being realized. Requiring clearing would ensure that they continue to be realized.

3. Price Discovery

Clearing, in general, encourages better price discovery because it eliminates the importance of counterparty creditworthiness in pricing swaps cleared through a given DCO. By making the counterparty creditworthiness of all swaps of a certain type essentially the same, prices should reflect factors related to the terms of the swap, rather

¹⁶⁶ See section V above.

¹⁶⁷ Issues related to competition also are considered in sections V and VIII.

than the idiosyncratic risk posed by the entities trading it. Because most of these swaps are cleared voluntarily, these effects on price discovery are currently being realized. Requiring clearing would ensure that they continue to be realized.

4. Sound Risk Management Practices

If a firm enters into uncleared and uncollateralized swaps to hedge certain positions and then the counterparty to those swaps defaults unexpectedly, the firm could be left with large outstanding exposures. Even for uncleared swaps that are subject to the Commission's uncleared swap margin regulations, some counterparty credit risk remains.¹⁶⁸ As stated above, when a swap is cleared the DCO becomes the counterparty facing each of the two original participants in the swap. This standardizes and reduces counterparty risk for each of the two original participants. To the extent that a market participant's hedges comprise swaps that are required to be cleared and would not be cleared voluntarily, the requirement enhances their risk management practices by reducing their counterparty risk.

In addition, to the extent that required clearing reduces or deters a potential increase in bilateral trading, it reduces the complexity of unwinding or transferring swap positions from large entities that default. Procedures for transfer of swap positions and mutualization of losses among DCO members are already in place, and the Commission anticipates that they are much more likely to function in a manner that enables rapid transfer of defaulted positions than legal processes that would surround the enforcement of bilateral contracts for uncleared swaps.¹⁶⁹

¹⁶⁸ For example, there is a small risk of a sudden price move so large that a counterparty would be unable to post sufficient variation margin to cover the loss, which may exceed the amount of initial margin posted, and could be forced into default.

¹⁶⁹ Sound risk management practices are critical for all DCOs, especially those offering clearing for interest rate swaps given the size and interconnectedness of the global interest rate swap market, as presented throughout this proposal. The Commission considered whether each regulation § 39.5(b) submission under review was consistent with the DCO core principles. In particular, the Commission considered the DCO submissions in light of Core Principle D, which relates to risk management. *See also* section V.C above for

Central clearing has evolved since the 2009 G20 Pittsburgh Summit, when G20 leaders committed to central clearing of all standardized swaps.¹⁷⁰ The percentage of the swap market that is centrally cleared has increased significantly, clearinghouses have expanded their offerings, and the range of banks and other financial institutions that submit swaps to clearinghouses has broadened. At the same time, the numbers of swap clearinghouses and swap clearing members has remained highly concentrated. This has created concerns about a concentration of credit and liquidity risk at clearinghouses that could have systemic implications.¹⁷¹

However, the Commission believes that DCOs are capable of risk managing the swaps that are the subject of this proposed determination. Moreover, because most of the RFR OIS to be added to the clearing requirement under this proposed determination are already cleared voluntarily, the Commission anticipates that the extent to which this proposed determination would increase the credit risk and liquidity risk that is concentrated at DCOs would be relatively small. The Commission requests comments on this issue.

5. Other Public Interest Considerations

In September 2009, the President and other leaders of the G20 nations met in Pittsburgh and committed to a program of action that includes, among other things, central clearing of all standardized swaps.¹⁷² The Commission believes that this clearing

a discussion of the effect on the mitigation of systemic risk in the interest rate swap market, as well as the protection of market participants during insolvency events at either the clearing member or DCO level.

¹⁷⁰ The G20 Leaders Statement made in Pittsburgh is available at <http://www.g20.utoronto.ca/2009/2009communique0925.html>.

¹⁷¹ See Dietrich Domanski, et al., “Central clearing: Trends and current issues,” BIS Quarterly Review, Dec. 2015, available at https://www.bis.org/publ/qtrpdf/r_qt1512g.pdf; U.S. Department of the Treasury, Office of Financial Research, Financial Stability Report, at 35 (Nov. 2018), available at <https://www.federalreserve.gov/publications/files/financial-stability-report-201811.pdf>; Umar Faruqi, et al., “Clearing risks in OTC derivatives markets: the CCP-bank nexus,” at 77-79 (2018), available at https://www.bis.org/publ/qtrpdf/r_qt1812h.pdf.

¹⁷² The G20 Leaders Statement made in Pittsburgh is available at <http://www.g20.utoronto.ca/2009/2009communique0925.html>.

requirement proposal would be consistent with the G20's commitment and would reflect the Commission's ongoing confidence in central clearing for swaps and other derivatives. As discussed throughout this proposal, central clearing of derivatives by DCOs can serve the public interest in numerous ways.

VIII. RELATED MATTERS

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis with respect to such impact.¹⁷³ This proposed determination will not affect any small entities, as the RFA uses that term. Only eligible contract participants (ECPs) may enter into swaps, unless the swap is listed on a designated contract market (DCM),¹⁷⁴ and the Commission has determined that ECPs are not small entities for purposes of the RFA.¹⁷⁵ This proposed determination would affect only ECPs because all persons that are not ECPs are required to execute their swaps on a DCM, and all contracts executed on a DCM must be cleared by a DCO, as required by statute and regulation, not the operation of any clearing requirement determination. Therefore, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that this proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)¹⁷⁶ imposes certain requirements on Federal agencies, including the Commission, in connection with conducting or sponsoring any collection of information as defined by the PRA. This rulemaking will not require a new

¹⁷³ 5 U.S.C. 601 *et seq.*

¹⁷⁴ Section 2(e) of the CEA, 7 U.S.C. 2(e).

¹⁷⁵ Opting Out of Segregation, 66 FR 20740, 20743 (Apr. 25, 2001).

¹⁷⁶ 44 U.S.C. 3507(d).

collection of information from any persons or entities, and there are no existing information collections related to this proposal.

C. Antitrust Considerations

Section 15(b) of the Act requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the Act, as well as the policies and purposes of the Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the Act.¹⁷⁷ The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requests comment on whether the proposal implicates any other specific public interest to be protected by the antitrust laws.

The Commission has considered the proposal to determine whether it is anticompetitive and has preliminarily identified no anticompetitive effects. The Commission requests comment on whether the proposal is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has preliminarily determined that the proposal is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the Act. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the Act.

List of Subjects in 17 CFR Part 50

Business and industry, Clearing, Swaps.

¹⁷⁷ Section 15(b) of the CEA, 7 U.S.C. 15(b).

6. Conditional Notional Amounts	No	No.								
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Table 2 to Paragraph (a)			
Specification	Basis swap class		
1. Currency	Australian Dollar (AUD)	Euro (EUR)	U.S. Dollar (USD).
2. Floating Rate Indexes	BBSW	EURIBOR	LIBOR.
3. Stated Termination Date Range	28 days to 30 years	28 days to 50 years	28 days to 50 years.
4. Optionality	No	No	No.
5. Dual Currencies	No	No	No.
6. Conditional Notional Amounts	No	No	No.

Table 3 to Paragraph (a)					
Specification	Forward rate agreement class				
1. Currency	Euro (EUR)	Polish Zloty (PLN)	Norwegian Krone (NOK)	Swedish Krona (SEK)	U.S. Dollar (USD).
2. Floating Rate Indexes	EURIBOR	WIBOR	NIBOR	STIBOR	LIBOR.
3. Stated Termination Date Range	3 days to 3 years	3 days to 2 years	3 days to 2 years	3 days to 3 years	3 days to 3 years.
4. Optionality	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No.

6. Conditional Notional Amounts	No	No	No	No	No.
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Table 4 to Paragraph (a)

Specification	Overnight index swap class								
1. Currency	Australian Dollar (AUD)	Canadian Dollar (CAD)	Euro (EUR)	Singapore Dollar (SGD)	Sterling (GBP)	Swiss Franc (CHF)	U.S. Dollar (USD)	U.S. Dollar (USD)	Yen (JPY).
2. Floating Rate Indexes	AONIA-OIS	CORRA-OIS	€STR	SORA	SONIA	SARON	FedFunds	SOFR	TONA.
3. Stated Termination Date Range	7 days to 2 years	7 days to 2 years	7 days to 3 years	7 days to 10 years	7 days to 50 years	7 days to 30 years	7 days to 3 years	7 days to 50 years	7 days to 30 years.
4. Optionality	No	No	No	No	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No	No	No	No	No	No.

* * * * *

3. Revise § 50.26 to read as follows:

§ 50.26 Swap clearing requirement compliance dates.

(a) *Compliance dates for interest rate swap classes.* The compliance dates for swaps that are required to be cleared under § 50.4(a) are specified in the following table.

Table 1 to Paragraph (a)

Swap asset class	Swap class subtype	Currency and floating rate index	Stated termination date range	Clearing requirement compliance date
Interest Rate Swap	Fixed-to-Floating	Euro (EUR) EURIBOR	28 days to 50 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Fixed-to-Floating	U.S. Dollar (USD) LIBOR	28 days to 50 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Fixed-to-Floating	Australian Dollar (AUD) BBSW	28 days to 30 years	All entities December 13, 2016.
Interest Rate Swap	Fixed-to-Floating	Canadian Dollar (CAD) CDOR	28 days to 30 years	All entities July 10, 2017.
Interest Rate Swap	Fixed-to-Floating	Hong Kong Dollar (HKD) HIBOR	28 days to 10 years	All entities August 30, 2017.
Interest Rate Swap	Fixed-to-Floating	Mexican Peso (MXN) TIIE-BANXICO	28 days to 21 years	All entities December 13, 2016.
Interest Rate Swap	Fixed-to-Floating	Norwegian Krone (NOK) NIBOR	28 days to 10 years	All entities April 10, 2017.
Interest Rate Swap	Fixed-to-Floating	Polish Zloty (PLN) WIBOR	28 days to 10 years	All entities April 10, 2017.
Interest Rate Swap	Fixed-to-Floating	Singapore Dollar (SGD) SOR-VWAP	28 days to 10 years	All entities October 15, 2018.
Interest Rate Swap	Fixed-to-Floating	Swedish Krona (SEK) STIBOR	28 days to 15 years	All entities April 10, 2017.
Interest Rate Swap	Basis	Euro (EUR) EURIBOR	28 days to 50 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10,

				2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Basis	U.S. Dollar (USD) LIBOR	28 days to 50 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Basis	Australian Dollar (AUD) BBSW	28 days to 30 years	All entities December 13, 2016.
Interest Rate Swap	Forward Rate Agreement	Euro (EUR) EURIBOR	3 days to 3 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Forward Rate Agreement	U.S. Dollar (USD) LIBOR	3 days to 3 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Forward Rate Agreement	Polish Zloty (PLN) WIBOR	3 days to 2 years	All entities April 10, 2017.
Interest Rate Swap	Forward Rate Agreement	Norwegian Krone (NOK) NIBOR	3 days to 2 years	All entities April 10, 2017.
Interest Rate Swap	Forward Rate Agreement	Swedish Krona (SEK) STIBOR	3 days to 3 years	All entities April 10, 2017.
Interest Rate Swap	Overnight Index Swap	Euro (EUR) €STR	7 days to 3 years	All entities [30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].
Interest Rate Swap	Overnight Index Swap	Singapore Dollar (SGD) SORA	7 days to 10 years	All entities [30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].
Interest Rate Swap	Overnight Index Swap	Sterling (GBP) SONIA	7 days to 2 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
			2 years + 1 day to 3 years	All entities December 13, 2016.

			3 years + 1 day to 50 years	All entities [30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].
Interest Rate Swap	Overnight Index Swap	Swiss Franc (CHF) SARON	7 days to 30 years	All entities [30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].
Interest Rate Swap	Overnight Index Swap	U.S. Dollar (USD) FedFunds	7 days to 2 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
			2 years + 1 day to 3 years	All entities December 13, 2016.
Interest Rate Swap	Overnight Index Swap	U.S. Dollar (USD) SOFR	7 days to 50 years	All entities [30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].
Interest Rate Swap	Overnight Index Swap	Australian Dollar (AUD) AONIA-OIS	7 days to 2 years	All entities December 13, 2016.
Interest Rate Swap	Overnight Index Swap	Canadian Dollar (CAD) CORRA-OIS	7 days to 2 years	All entities July 10, 2017.
Interest Rate Swap	Overnight Index Swap	Yen (JPY) TONA	7 days to 30 years	All entities [30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

(b) *Compliance dates for credit default swap classes.* The compliance dates for swaps that are required to be cleared under § 50.4(b) are specified in the following table.

Table 2 to Paragraph (b)				
Swap asset class	Swap class subtype	Indices	Tenor	Clearing requirement compliance date
Credit Default Swap	North American untranching CDS indices	CDX.NA.IG	3Y, 5Y, 7Y, 10Y	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.

Credit Default Swap	North American untranch CDS indices	CDX.NA.HY	5Y	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Credit Default Swap	European untranch CSD indices	iTraxx Europe	5Y, 10Y	Category 1 entities April 26, 2013. Category 2 entities July 25, 2013. All non-Category 2 entities October 23, 2013.
Credit Default Swap	European untranch CSD indices	iTraxx Europe Crossover	5Y	Category 1 entities April 26, 2013. Category 2 entities July 25, 2013. All non-Category 2 entities October 23, 2013.
Credit Default Swap	European untranch CSD indices	iTraxx Europe HiVol	5Y	Category 1 entities April 26, 2013. Category 2 entities July 25, 2013. All non-Category 2 entities October 23, 2013.

[The following amendments would be effective July 1, 2023.]

4. In § 50.4 revise paragraph (a) to read as follows:

§ 50.4 Classes of swaps required to be cleared.

(a) *Interest rate swaps.* Swaps that have the following specifications are required to be cleared under section 2(h)(1) of the Act, and shall be cleared pursuant to the rules of any derivatives clearing organization eligible to clear such swaps under § 39.5(a) of this chapter.

Table 1 to Paragraph (a)								
Specification	Fixed-to-floating swap class							
1. Currency	Australian Dollar (AUD)	Canadian Dollar (CAD)	Euro (EUR)	Hong Kong Dollar (HKD)	Mexican Peso (MXN)	Norwegian Krone (NOK)	Polish Zloty (PLN)	Swedish Krona (SEK)
2. Floating Rate Indexes	BBSW	CDOR	EURIBOR	HIBOR	THE-BANXICO	NIBOR	WIBOR	STIBOR

Table 2 to Paragraph (a)

Specification	Basis swap class	
1. Currency	Australian Dollar (AUD)	Euro (EUR).
2. Floating Rate Indexes	BBSW	EURIBOR.
3. Stated Termination Date Range	28 days to 30 years	28 days to 50 years.
4. Optionality	No	No.
5. Dual Currencies	No	No.
6. Conditional Notional Amounts	No	No.

Table 3 to Paragraph (a)

Specification	Forward rate agreement class			
1. Currency	Euro (EUR)	Polish Zloty (PLN)	Norwegian Krone (NOK)	Swedish Krona (SEK).
2. Floating Rate Indexes	EURIBOR	WIBOR	NIBOR	STIBOR.
3. Stated Termination Date Range	3 days to 3 years	3 days to 2 years	3 days to 2 years	3 days to 3 years.
4. Optionality	No	No	No	No.
5. Dual Currencies	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No.

Table 4 to Paragraph (a)									
Specification	Overnight index swap class								
1. Currency	Australian Dollar (AUD)	Canadian Dollar (CAD)	Euro (EUR)	Singapore Dollar (SGD)	Sterling (GBP)	Swiss Franc (CHF)	U.S. Dollar (USD)	U.S. Dollar (USD)	Yen (JPY).
2. Floating Rate Indexes	AONIA-OIS	CORRA-OIS	€STR	SORA	SONIA	SARON	FedFunds	SOFR	TONA.
3. Stated Termination Date Range	7 days to 2 years	7 days to 2 years	7 days to 3 years	7 days to 10 years	7 days to 50 years	7 days to 30 years	7 days to 3 years	7 days to 50 years	7 days to 30 years.
4. Optionality	No	No	No	No	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No	No	No	No	No	No.

* * * * *

5. In § 50.26, revise paragraph (a) to read as follows:

§ 50.26 Swap clearing requirement compliance dates.

(a) *Compliance dates for interest rate swap classes.* The compliance dates for swaps that are required to be cleared under § 50.4(a) are specified in the following table.

Table 1 to Paragraph (a)

Swap asset class	Swap class subtype	Currency and floating rate index	Stated termination date range	Clearing requirement compliance date
Interest Rate Swap	Fixed-to-Floating	Euro (EUR) EURIBOR	28 days to 50 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Fixed-to-Floating	Australian Dollar (AUD) BBSW	28 days to 30 years	All entities December 13, 2016.
Interest Rate Swap	Fixed-to-Floating	Canadian Dollar (CAD) CDOR	28 days to 30 years	All entities July 10, 2017.
Interest Rate Swap	Fixed-to-Floating	Hong Kong Dollar (HKD) HIBOR	28 days to 10 years	All entities August 30, 2017.
Interest Rate Swap	Fixed-to-Floating	Mexican Peso (MXN) TIIE-BANXICO	28 days to 21 years	All entities December 13, 2016.
Interest Rate Swap	Fixed-to-Floating	Norwegian Krone (NOK) NIBOR	28 days to 10 years	All entities April 10, 2017.
Interest Rate Swap	Fixed-to-Floating	Polish Zloty (PLN) WIBOR	28 days to 10 years	All entities April 10, 2017.
Interest Rate Swap	Fixed-to-Floating	Swedish Krona (SEK) STIBOR	28 days to 15 years	All entities April 10, 2017.
Interest Rate Swap	Basis	Euro (EUR) EURIBOR	28 days to 50 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Basis	Australian Dollar (AUD) BBSW	28 days to 30 years	All entities December 13, 2016.
Interest Rate Swap	Forward Rate Agreement	Euro (EUR) EURIBOR	3 days to 3 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10,

				2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Forward Rate Agreement	Polish Zloty (PLN) WIBOR	3 days to 2 years	All entities April 10, 2017.
Interest Rate Swap	Forward Rate Agreement	Norwegian Krone (NOK) NIBOR	3 days to 2 years	All entities April 10, 2017.
Interest Rate Swap	Forward Rate Agreement	Swedish Krona (SEK) STIBOR	3 days to 3 years	All entities April 10, 2017.
Interest Rate Swap	Overnight Index Swap	Euro (EUR) €STR	7 days to 3 years	All entities [30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].
Interest Rate Swap	Overnight Index Swap	Singapore Dollar (SGD) SORA	7 days to 10 years	All entities [30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].
Interest Rate Swap	Overnight Index Swap	Sterling (GBP) SONIA	7 days to 2 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
			2 years + 1 day to 3 years	All entities December 13, 2016.
			3 years + 1 day to 50 years	All entities [30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].
Interest Rate Swap	Overnight Index Swap	Swiss Franc (CHF) SARON	7 days to 30 years	All entities [30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].
Interest Rate Swap	Overnight Index Swap	U.S. Dollar (USD) FedFunds	7 days to 2 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
			2 years + 1 day to 3 years	All entities December 13, 2016.
Interest Rate Swap	Overnight Index Swap	U.S. Dollar (USD) SOFR	7 days to 50 years	All entities [30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

Interest Rate Swap	Overnight Index Swap	Australian Dollar (AUD) AONIA-OIS	7 days to 2 years	All entities December 13, 2016.
Interest Rate Swap	Overnight Index Swap	Canadian Dollar (CAD) CORRA-OIS	7 days to 2 years	All entities July 10, 2017.
Interest Rate Swap	Overnight Index Swap	Yen (JPY) TONA	7 days to 30 years	All entities [30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

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Issued in Washington, DC, on May 11, 2022, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

NOTE: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps to Account for the Transition from LIBOR and Other IBORs to Alternative Reference Rates – Commission

Voting Summary and Commissioner’s Statement

Appendix 1 – Commission Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner noted in the negative.

Appendix 2 – Statement of Commissioner Christy Goldsmith Romero

The amendments the Commission proposes today support initiatives designed to reduce risk posed by reliance on the London Interbank Offered Rate (LIBOR), and other interbank offered rates (IBORs), as benchmark reference rates. A decade ago, allegations of manipulation of LIBOR led to government investigations. In the years since, regulators in the U.S. and abroad have recognized the need to replace LIBOR with

benchmarks that promote market integrity and carry far less risk. However, it has always been recognized that this transition would be a complex and lengthy undertaking. As a result of significant coordinated efforts across the public and private sectors, great progress has been made in the transition to alternative reference rates that are less susceptible to manipulation. I commend Chairman Behnam for his steadfast leadership in pursuing a successful transition away from LIBOR. I commend the Commission's staff for their steadfast efforts to be thoughtful, careful and comprehensive at each step of the transition, including the step that brings us here today.

I will support the Notice of Proposed Rulemaking to amend the swap clearing requirement to account for the market shift to alternative reference rates that would significantly limit risk. This step would add to the successful progress in, and the Commission's commitment to, a smooth transition away from LIBOR.

Sound functioning benchmark rates promote the stability and integrity of derivatives markets. The Commission and its staff have worked closely with regulatory counterparts, in the U.S. and abroad, to support and harmonize initiatives to decrease reliance on IBORs and to encourage market adoption of overnight, nearly risk-free reference rates (RFRs). The Commission's proposal recognizes that liquidity in IBOR-linked interest rate swaps has continued to transition to RFRs, as IBORs are discontinued or become nonrepresentative. The proposal also recognizes that, in light of U.S.-led initiatives including SOFR First, there is decreasing market reliance on USD LIBOR—and significant liquidity in, and voluntary clearing of, overnight index swaps (OIS) referencing the Secured Overnight Financing Rate (SOFR).

I support the objective of aligning the Commission's approach with that of its regulatory counterparts in other jurisdictions who are similarly in the process of revisiting their clearing obligations to account for the transition away from LIBOR. International coordination is necessary for a successful transition to reduce benchmark-related risk.

International coordination also will help to ensure that central clearing remains, globally, a pillar of post-crisis financial regulatory reform.

I thank the Commission's staff for all of their detailed and comprehensive work on the proposal, and look forward to reviewing the public comments provided in response.

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